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CHARGE

From the Justice of England



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# CHARGE

— OF THE

## LORD CHIEF JUSTICE OF ENGLAND

IN THE CASE OF

*The Queen* against *Thomas Castro*,

Otherwise *Arthur Orton*, otherwise *Sir Roger Tichborne*.

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Reprinted from the Official Copy taken from the Shorthand Writer's Notes.

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Corrected by the Lord Chief Justice.

IN TWO VOLUMES. Vol. II.

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# Summing-up

OF

## ERRATA.

VOL. II.

- Page 23, line 20, *dele* "he says."  
" 32, " 31, *dele* "of."  
" 43, " 21, *for* "may," *read* "might."  
" 53, " 7, *for* "at Melipilla," *read* "in Chili."  
" 58, " 25, *dele* "a portion of."  
" 79, " 10, *for* "January," *read* "July."  
" 90, " 30, *for* "suit," *read* "service."  
" 346, " 8, *for* "every," *read* "any."  
" 469, " 31, *before* "life," *insert* "military."  
" 646, " 16, *for* "Then the," *read* "The other."  
" 646, last line, *dele* "the evidence of."

secondly of the various facts bearing upon the question, established, and for the most part clearly established, by other and different evidence, and which has to be taken into account before we can decide upon which side lies the truth—whether upon the side of those who say this is Arthur Orton, or upon the side of those who say he is not; and I will first pass in review the evidence as to identity—a very important part of the inquiry—not dwelling long upon those witnesses who merely speak from general recollection of identity, a sort of recollection which is very apt to be deceptive after so long an interval—for an interval of seventeen years has elapsed between the time when the witnesses last saw Arthur Orton, and the time when they first saw the defendant.

Of course the most important witness of all those who were called to speak to the identity of the defendant as Arthur Orton was Mary Ann Loader. You will remember that Arthur Orton, when he came home in 1851, after having first proposed to Miss Kemp to be his sweetheart, next proposed the same thing to Miss Loader. She accepted

him, and they kept company from 1851 until he left in November, 1852. She says she walked with him every day, was thoroughly acquainted with his features, and knew his voice; she saw and heard the defendant examined, and identifies him as Arthur Orton. She says he had light hair when he came from South America, and that the hair which was sent from South America is of the same colour as Arthur Orton's was at that time. She speaks of his nervous affection; of the strong family likeness; of his likeness both to the father and the mother. Of course, like everybody else, she is not infallible and may be mistaken; but it is scarcely necessary to observe that a woman who has felt attachment for a man, as she seems to have done for Arthur Orton, who kept company with him for many months, who walked with him whenever they could get out together, and was quite ready to marry him, is not likely to lose the recollection of the features of the man with whom she has had such an intimacy. Are we to believe that Miss Loader has come here to state that which is untrue? At one moment the learned counsel said she had a dislike to Arthur Orton because he had thrown her over and played false to her, and that fancying this man was Arthur Orton she gave evidence against him out of hatred and spite towards him. I really cannot follow that argument. I can understand that if Roger Tichborne had kept company with a person, and that person desired to spite him, she might say he was not Roger Tichborne; but why Miss Loader, never having had any relations of this kind with Roger Tichborne, should desire to spite Roger Tichborne, and with that object say he is Arthur Orton, is a species of reasoning which I confess I am unable to follow. Any desire on her part to spite the defendant could only be founded on her conviction that he is Arthur Orton, and would be the best possible proof of the sincerity of that conviction. But did you see in her evidence any signs of a desire to spite or bear hardly on the defendant? Did you see in it anything beyond a desire to speak the truth? She said that if she had had any doubt of his identity she would have given him the benefit of the doubt. Do you disbelieve the sincerity of that assertion? Then the learned counsel made an attack on her character which signally failed, and which I thought, I must say, very much out of place and very unworthy. I will say no more upon that, and will proceed to pass the other witnesses in review. I may observe, once for all, that all the witnesses I am about to bring before you identify the defendant as Arthur Orton.

The next witness is Ann Cockburn, who lived in the neighbourhood so long, and who was on very intimate terms with the whole of the Orton family, especially Mrs. Tredgett. She was so intimate with the family that she was present at the death-bed of Mr. and Mrs. Orton, which, of course, implies a very considerable intimacy.



She remembers Arthur, and speaks about his having St. Vitus's dance. She says he was not pock-marked, and that she never saw him with earrings. Speaking of the St. Vitus's dance, she said that at one time when he was a boy he was constantly in motion, and could not sit still from the involuntary spasms and twitching produced by this affection, but that after his return from sea it was visible in a much less degree. It was then very slight. He had been sent to sea for the purpose of getting rid of the complaint if possible. She knew it was St. Vitus's dance from his mother having told her so. She agrees that his hair was light in colour; that his hands were rather small; and she tells us that he was a fat, unwieldy boy, and that in consequence of that he went by the name of "Bullocky" Orton. She speaks to the identity of the defendant, and says that when she went to the Bankruptcy Court where he was to be examined, on the occasion of his insolvency, she "knew him in a moment."

Then there is Chew, a lighterman, who says, as showing his intimacy with the Ortons, that he was more in their house than he was in his own. He was requested by Mr. Moojen, defendant's then attorney, to go and see the claimant at the Inns of Court Hotel, and he recognized him at once as Arthur Orton. This is one of the witnesses who never saw Arthur after his first return from sea, and therefore never after he was fourteen years of age. I should doubt, therefore, whether he can speak satisfactorily to his identity after such a long interval, and should think that his evidence is consequently of less cogency and weight than that of people who knew Arthur Orton later in life.

Next there is Whitbread, a provision merchant, who knew the whole Orton family intimately, and who knew Arthur Orton from five years old until the last day when he finally left on board the 'Middleton.' He says this is the man. He says Arthur had a twitching, and the father had the same kind of twitching—a continued raising and lowering of the eyebrows. This, he says, was called in the family St. Vitus's dance. He remembers Arthur as a lad going about with Shetland ponies; he says he was very stout; his hair was not curly, but used to rise behind. Then comes his evidence about Arthur's knees, which is very important, as you will see in the sequel. He says he was not knock-kneed, but he had a kind of in-kneed walk, which was common to him and his father, and his brother Thomas. He speaks of the defendant's voice being so like old George Orton's, that he could have told him by the likeness of the voice. He has not the slightest doubt of the defendant being the man. He tells a somewhat strange story of having been down to Ilford, when there was a pigeon-match going on at which the defendant was shooting, and that the defendant met him there, and shirked and avoided him. That is the effect of his statement.

Sarah Aitchison, who lived opposite to old Orton's, for fifty years, as daughter and wife, remembers Arthur from his infancy, both before and after his going to sea. She speaks of the St. Vitus's dance, and says he was sent to sea for the improvement of his health, and was better on his return. She remembers his having small-pox on him three weeks or a month, but says it left no marks at all.

Then there is Mrs. East, who was Sophia Warwick—whom the defendant, according to the two witnesses from the 'Globe,' remembered as "the stout sister," who lived first with her parents, and afterwards with her husband, at the butcher's shop in the High Street. She knew Arthur Orton from a child, both before and after he went to sea. She was not intimate, however, with the family, but only saw him as a neighbour. She speaks to the St. Vitus's dance.

Then there is Mrs. Church, who lived near the Orton family ever since her marriage in 1838. Arthur Orton went to school next door. Her little boy was a school-fellow and playmate, and she speaks of the nervous affection, but only as having heard of it; she never noticed it particularly. She never noticed any marks of small-pox; never saw any earrings. She, too, speaks of the family likeness. She heard the defendant speak at Cambridge Hall, and says that she recognized his voice at once. I own I have some little distrust of people, unless they were very intimate indeed, and had almost constant intercourse with a man, who come and say they recollect the voice after so many years. No doubt there are voices which leave an impression that you do not forget. If there are any circumstances when you have heard a person's voice on any particular occasion which are calculated to make it leave an impression on your memory, or if you are constantly in the habit of hearing it, I quite agree that you can remember a person by the voice as well as in any other way. But if it is merely a casual acquaintance, which does not bring you into habitual intercourse with a person, then I think it is very suspicious when people say they can recollect the voice after a great many years. She is another witness who speaks to his having a peculiar walk, and being in-kneed.

Next there is William Alum, the barge-builder. He knew the family; he knew Arthur Orton as a boy, and knew him after his return from America. He says he was a very big, stout boy, half as heavy again as lads of his age. It was more in breadth than in height that the size showed itself. His voice was husky. He was called "Fatty Orton," or "Bullocky Orton." He cannot say he ever spoke to him. He only saw him about in the neighbourhood, and only heard him speak to some of his school-fellows. I cannot say that this is a witness whose evidence carries much weight with it.

Then comes Mrs. Sarah Gill, the wife of a hair-dresser in that neighbourhood, who has lived all her life at Wapping and knew the



Orton family, and Arthur from a boy. She has seen him in her father's shop, in his butcher's dress, a hundred times. She used to see him in Cronin's shop also, and heard him speak there. She used to see him about with the Shetland ponies, and has a recollection of his voice. But she does not speak of him after his first going to sea, and, therefore, can only speak to him up to the age of 14.

Then there is Frederick Cronin, whose father kept a shop at the opposite corner of Globe and High Streets, as a ship store-dealer. He carried on the business there after his father's death. Arthur Orton and he used frequently to meet as boys, and he frequently saw him in old Orton's shop attending in it, and assisting in the business, dressed in a butcher's dress. This was from 1842 to 1848. He again does not speak of him after his return from sea.

Then there is his brother, Francis Cronin, who lived with his father until he went to school in the country at the end of 1844; afterwards he returned and remained until 1850. He knew the Ortons; he and Arthur used to play together as boys. He remembers his going to sea, and the acquaintance was renewed on his return. He saw him twenty or thirty times after his return; they were not at that time very intimate; but sufficiently so to stop and say good day, if they met. He tells us Arthur was called "Bullocky;" that he was not pock-marked: "If he had been," says Cronin, "I must have seen it."

The importance of these two Cronins is that they were immediate neighbours, living very near indeed, and they were the very persons whom the defendant inquired after when he went on that Christmas night to the Globe. Therefore the Cronins were perfectly well known to him. He recollected their names and inquired about them, which implies that there was an intimacy between them which would be likely to leave an impression of what sort of a person Arthur Orton was, and of his personal appearance, upon the recollection of these persons.

Next comes Robert Gosheron, a sailmaker and publican, an inhabitant of Wapping for thirty-two years, and who lived at the "Old 42," in the High Street. He was at school with Arthur Orton, first at Knights, in Great Hermitage Street, and afterwards at Rossiter's in Bridge Street. They were schoolfellows and constant companions; he knew him less after his return from sea, yet occasionally met and conversed with him. Before going to sea he used to ride the Shetland ponies with him; but strange to say, he never observed that he had a nervous affection like the St. Vitus's dance.

Then there was Russell William Donn, who lived in Wapping for thirty-seven or thirty-eight years, and knew the Orton family, and Arthur from childhood. By the time Arthur came back he

(witness) was apprenticed a few doors from Orton's shop, and so saw Arthur constantly. He says he was a stout boy, a big, powerful fellow, with knees bent inward, and hair light.

Then comes Mrs. Charlotte Smith, a daughter of old Gosheron. She used to see the Ortons two or three times a day; her brother and the Orton boys were playfellows. Never passed him without speaking to him; knew him on his return as well as before; used to see him engaged in his father's shop dressed in a butcher's blue smock.

Mrs. Elizabeth Abigail Laws, wife of a chain-lighterman. She is a sister of Captain Jury, who married Elizabeth Orton. Went to school with all the Ortons as children, the mother sending the boys to a girls' school. She says she knew Mr. and Mrs. Orton as well as she knew her own parents. She says she used to spend three evenings in the week with the Ortons, staying three or four hours at a time; but then this was before Arthur Orton first went to sea, therefore not later than when he was of the age of fourteen. She says he went away on account of having St. Vitus's dance, which used to draw up the side of the face. He had had the small-pox, but he had no marks of it. Mrs. Tredgett had it first, and he took it from her, but it left no marks. Earrings were not worn by Arthur Orton, but by Edmund, who had been at sea. She describes him as a very big fat boy, who was called "Bullocky." "All the family had a little illformation of the shoulders; whence they used to call them the 'Buffalo breed.'" She speaks of Captain Jarvis, of Bridport, and Captain Angel, with his son Henry, being constant visitors at the Ortons. These are the names, you remember, which occur in the Wagga-Wagga will.

Next comes Thomas William Wallace, a saddler of Wapping, who used to do business with George Orton, and was constantly in the habit of calling at the shop on business matters. Before 1848 he used to call at Orton's shop two or three times a week, and had very considerable business relations with him. He speaks of the twitching of Arthur Orton's limbs and the blinking of his eyes. Arthur helped in his father's business after his return as well as before he left. Saw him after he came home, first in a sailor's, and afterwards in a butcher's, costume. Never saw any marks of small-pox on his face, and never saw him with earrings. As to voice, he says Arthur Orton's voice was like his father's. He was wonderfully like his father in the face, and very much his build. He was stout, fat, big, and quite likely to turn into a stout man. He, like the foregoing witnesses, identifies the defendant as the Arthur Orton that he knew.

John James Collins, carver and gilder, was daily at work at the premises over the stables where the Shetland ponies used to be

kept, until November, 1852. Saw Arthur Orton very often, sometimes playing with the ponies. He was a great big boy, about eighteen or nineteen, very big for his age: and he is sure the defendant is he.

George Wynn, baker, managed the business of a Miss Mark in the High Street. Served the Orton family with bread every day. Has resided at Wapping from his earliest recollection. Saw Arthur Orton from his infancy, and certainly from ten years old until 1852, when he left to go to sea. George Orton, the father, had a certain movement in his eyes, and Arthur Orton, his son, had it likewise. He speaks of Arthur serving in his father's shop, a fact which will be material by-and-by. He came to his shop both before and after he went to sea. He does not remember any mark of small-pox on his face, or his wearing earrings. He remembers the voice, and undertakes to say the defendant's voice is the same. He told the defendant when he saw him in November, 1870, at Mr. Moojen's, the attorney's, that he was Arthur Orton. He is certain he is the man.

Walter Leaver was apprenticed to Mr. White, a smith and engineer, next door to Orton's shop at East Smithfield. Arthur Orton used to come into the shop, and they were together almost daily for four years until Arthur Orton went to sea. After Arthur returned he came to the shop to see the witness. There were scales hanging in the shop, and the defendant got into the scales and the witness weighed him, and he was something like  $13\frac{1}{2}$  stone, being at that time seventeen years of age; whereas Roger Tichborne, as we know, did not weigh 10 stone to the end of his time of being in this country. He says Arthur Orton used to jump and hop at times about the street and hitch one side. This of course was from the St. Vitus's dance. He never saw any pock-marks on him whatever. He never saw him with earrings. He has no doubt about defendant's voice being the voice of Arthur Orton. When he first saw the defendant in Croydon, in 1867, he recognized him in a moment as Arthur Orton.

Mrs. Hannah Johnson, whose maiden name was Kemp, has lived at Wapping nearly all her life; knew the Orton family as well as she can remember anything, and knew Arthur Orton from childhood; remembers well his coming home from sea in 1848, because he asked her several times to walk with him—in other words, he wanted her to keep company with him—but she declined, and told him, what was only a ruse on her part, that she had a sweetheart already. She saw him frequently, until he gave her a letter asking her to keep company with him, whereupon she told him she was engaged, and she never spoke to him afterwards. She remembers Arthur Orton



perfectly well, and has no doubt the defendant is the man. He was very stout from a child. She says he was not marked with the small-pox.

Then there is John White, now forty years of age, who has lived in Wapping since he was ten years old. He knew the Ortons. Was the constant companion of Arthur Orton up to about 1848, when he was between fourteen and fifteen, the time of his first going to sea. Has seen him driving the Shetland ponies about the streets. He was as big a boy in proportion as the defendant is now as a man, and used to be called "Bullocky Orton;" his voice was husky like his father's, and defendant's voice is like that. He has not the slightest doubt that the defendant is Arthur Orton.

Robert White lived next door to one of old Orton's shops; knew the family and Arthur well, knew him till he was between fourteen and fifteen, for about five years. Arthur used to play with the witness and his brothers John and Lawrence. He has seen Arthur Orton leading the Shetland ponies. He was inclined to be stout—very stout. He had a husky voice, and he has no doubt as to his identity, but he did not see him after he was fourteen.

William Syrett, horse-dealer, born at Wapping, knew the Orton family. Knew Arthur well, and used to see him two or three times a day. Remembers him from the time witness can remember himself. Saw him every day to the time Arthur Orton went away the first and second time. When boys, they used to play tricks upon Arthur, and used to get cuts of the whip from old Orton, the father, for doing so.

Jane Syrett, wife of William Syrett, knew the Orton family before and after their marriage. Remembers his going to sea in 1851, when he was fourteen or fifteen. He went away again in 1852. Knew his three sisters. After he came back the first time, he worked with his brother Thomas as butcher. He wore a sailor's dress (midshipman's) when he returned from his sea voyage. Afterwards he was in butcher's clothes. Saw him in the shop of Mr. Warwick, the butcher. His voice was rather gruff. She has no doubt the defendant is Arthur Orton.

Charles Lawrence was formerly a playmate of Arthur Orton, and was apprenticed to Mr. Halstead, a sail-maker in Wapping, from 1842 till 1849. Saw Arthur Orton daily until 1847. He was a stout built sprawly lad; dressed in a butcher's frock. He remembers the twitching. He says he was not marked with the small-pox. I think this witness only knew him up to the time of his first going to sea, and it was very doubtful if the small-pox did not happen after he came back. It is, however, by no means clearly ascertained.

Thomas Britton Creed, master lighterman, was born at Wapping fifty years ago. He was well acquainted with the whole of the Orton family, and remembers Arthur from his infancy; also his going to sea, both the first and second time. He remembers his person; he was very stout; a large, awkward boy, in-kneed like his father, and one or two of his brothers. His voice was rough, very rough for a boy. He says the defendant is Arthur Orton. He speaks of Arthur Orton with reference to his manner of laughing. He said, "When he laughed, he laughed all over his face," which is a tolerably graphic description. Whether the defendant does—you have seen him laugh and smile—you must form your own judgment. Then he uses this strong expression, "No one who knew the Orton family could have a doubt about one of its members." He says they were an awkward-made lot. He does not think Arthur Orton was marked with small-pox, and he does not think he ever had earrings.

William Willoughby, who is the next witness, has lived at Wapping all his life. He knew the Orton family very well indeed, and Arthur Orton. The Ortons knew Mr. Richardson, whose estate the witness looked after. Witness was formerly a builder, and fitted up a butcher's shop for Charles Orton twenty years ago. Remembers George, Charles, Edmund, William, and Arthur. He remembers Arthur going to sea the second time. He says he had some nervous affection in the face. He used to see him with ponies. Is sure the defendant is Arthur Orton. He says, "I saw him at the office of Mr. Moojen, the attorney, and said, 'If you are Arthur Orton, you must know I am William Willoughby;' the defendant smiled, on which I said, 'You are the image of your sister Margaret.'" We have not seen the sister Margaret, and it would have been more satisfactory to us if we had. He says Arthur had a gruff voice, the same as most thick-necked people have. His voice was like his father's; you would hardly know the one from the other, the voices were so alike. He says he never saw Arthur marked with the small-pox, or wearing earrings.

Joseph Smith, master bricklayer at Wapping, was born there, and knew ten of the Orton family, and knew Arthur Orton perfectly well—the best of the lot—by going to school and playing with him. He was nicknamed "Bullocky." "Remembers his going to sea the first time, and returning afterwards. He used to come to him now and then, and see him frequently. He went to sea twice after that." That is a mistake—he only went to sea once after he came home the first time. He says he went to South America, and returned. He was acquainted with him up to that time. He says there were no pock-marks on his face, and he did not wear earrings—"I swear his ears were not pierced." He used to slobber a good deal; but he was much better after his return from sea. He used to move his

face a little now and then, but as he grew older he got out of it. He says the defendant is Arthur Orton—"not the least doubt about that."

Thomas Halstead was apprenticed to his uncle at Dublin Wharf, Wapping, from 1824 till 1831. Took a public-house opposite Orton's house in Lower East Smithfield. Knew Orton and his family, and Arthur perfectly well. Saw more of him than of the rest of the family. Has frequently talked to his mother about his affliction; the mother told him it was St. Vitus's dance. Noticed it frequently—a twitching in his mouth and shoulders. Water would run from his mouth at times. He was remarkably stout, a very fat boy. He was not marked with small-pox. Never saw him wear earrings.

Then comes Mrs. Richardson. She lived at the corner of Princes Street, High Street, Wapping, for thirty-six years, up to 1864 or 1865. Knew the Ortons perfectly well, and Arthur from his infancy. Remembers his going to sea, and returning the first time, and his going away a second time. She says, "I never remember his wearing earrings. He was very stout indeed for his age. In my opinion the defendant is Arthur Orton. Mr. Moojen called upon me in the summer of 1870. He asked me about the Orton family. A few weeks afterwards I went (with my husband) to his office in Southampton Street, Bloomsbury, and then to the Inns of Court Hotel. I heard defendant's voice in an adjoining room. When I saw defendant I said, in his presence, to Mr. Moojen: 'Had I known George Orton was living, I should have thought it was him speaking.' The voice was so much like him. Mr. Moojen told me to take a chair, and sit opposite the defendant, and look at him, and I did so. I said I thought he resembled the Orton family very much. Very shortly after we went in, the defendant left, saying he had an engagement. The interview lasted about ten minutes. After defendant left, Mr. Moojen asked me what we thought. We said we thought he was Arthur Orton." She said her husband was very ill, and could not come as a witness. On cross-examination she says: "I have seen Arthur frequently, and spoken to him occasionally. He caught the small-pox after his sister had it—I think before he went to sea the first voyage. Never observed any small-pox marks on his face. I said twice the defendant was Arthur Orton. He was smoking a cigar, and made a remark that somebody had come and said he had been to school with him, but that could not be, as he never went to a school in his life—he had a tutor. By the LORD CHIEF JUSTICE: The Orton family have called on me once or twice; but I never went to their house in my life." So that she had not the same intimacy as some of the other witnesses.

Now comes the evidence of Mr. James Brown, which is impor-



tant, because it fixes beyond all doubt the fact of Arthur having had St. Vitus's dance. Mr. Brown was a medical man, and partner with his father from 1841 until 1842, in practice at Wapping. He attended the Ortons, and remembers the whole family. He attended Arthur Orton in 1844 or 1846; he says, "The great fire at Wapping recalls it to my memory. After the fire I attended Arthur for a derangement of the nervous system called 'chorea,' popularly known as St. Vitus's dance. I remember distinctly the circumstance of being called in to attend him. Saw him looking after ponies down to 1852, when I left. He was a large, awkward, unwieldy boy, gross and fat; a coarse fat boy, very tall for his age. His hair was light; I recollect that well. He was weak in the knees; he was in-kneed. I have a distinct recollection of him. I remember having heard that he had gone to sea, and seeing him after his return. I was told the reason." Then Dr. Kenealy objects to his stating what he had been told as the reason. He says, that "going to sea would be an advantageous thing for him if he was affected with the malady—certainly very valuable; he should decidedly have recommended it." He says Arthur, when he came back, was dressed in the garb of a sailor in the merchant service, with gold lace round his cap. He continues, "I knew Arthur Orton as a little child. I can fix 1851 as the time when I have a distinct recollection of having seen him last. There was a strong family likeness between the brothers and sisters. He bent in one of his knees especially. I have a distinct recollection that he was not pock-marked. Cross-examined: I was distinctly given to understand that the complaint the child suffered from was owing to a fright, and the cause of that fright was a fire in the immediate neighbourhood of his father's residence. A sudden fright is a very powerful exciting cause to bring on that nervous affection. In my judgment and belief the defendant is Arthur Orton, whom I attended for St. Vitus's dance." This is an important witness, because he establishes, as I said just now, beyond all doubt, that Arthur Orton had St. Vitus's dance; and he also speaks (and as a medical man he would be likely to observe such things) about his size and make, to his having been in-kneed, especially with one knee, which is an important circumstance, because you will find by-and-by, when we come to the Carabineers' evidence, that some of the Carabineers describe Roger Tichborne in that respect almost in the very same terms as these Wapping witnesses describe Arthur Orton.

Henry Robert Angell, commander of the ship 'Collingwood,' became acquainted, as a boy, with the Orton family, about 1838, and knew the sons and daughters well. He knew Arthur quite well, from three years of age. Remembers very well his being afflicted with St. Vitus's dance. He says, "When any provisions were wanted for my father's vessel, a coaster between Bridport and Wapping, I fre-



quently went with my father for them to Mr. George Orton's. John Jarvis was my uncle. Mrs. Orton and Arthur went a voyage with me once, I think for the health of Master Arthur as much as anything. Between 1849 and 1853, when staying in the port of London, I often stayed with the Ortons. I remember Arthur leaving for South America. I learnt from Mrs. Orton that he had gone as an apprentice. Remember his coming back very well, and remaining on shore for some time afterwards. He was a smart boy, smart in throwing the lasso, particularly clever in doing it. He looked in those days smart in his dress. In September, 1853, I was at Hobart Town. I saw Arthur there; he came alongside the ship the day after we arrived, and remained on board three or four days."—That corresponds with the letter written by Arthur Orton from Hobart Town.—"He was then a stock-keeper, looking after stock. That was the last I saw of him. He had no whiskers—quite smooth cheeks at that time. He was a trifle bigger than he had been when I last saw him. In 1853 he was certainly not as big as defendant. I believe defendant is Arthur Orton." Cross-examined: "When I saw Mr. Robinson in 1867, no doubt I had a full recollection of Arthur Orton. I knew his voice, his manner, his features, his hair, all about him. I did not think at the first glance, when I saw defendant in 1868, that he was Arthur Orton. I heard his voice, which I recognized as Arthur's." Re-examined: "When I saw the defendant he was seventeen years older. He was altered in size, and had got whiskers, whereas he had not got them before. I would not swear an affidavit that he was not Orton, because the likeness was growing upon me the longer I saw him. When I came to think it over and recall my recollection, I came to the conclusion it was Arthur Orton, and I am of the same opinion now. By the COURT: There is a strong resemblance between the face of old Orton and defendant."

Lastly, there is a witness named Henry Allen, in the employ of Messrs. Penn, the engineers, of Greenwich, who was cook on board the 'Middleton,' the ship in which Arthur Orton went to Hobart Town. His name appears on the articles. He says "Arthur Orton shipped on board the 'Middleton' as butcher. Storey was the captain, John Lewis the first mate, James Peebles the boatswain, Owen David Lewis ordinary seaman. The last was some relative of the mate."—I pause here to observe that the name is an important one. The name ascribed by the defendant to the captain of the 'Osprey' was "Owen Lewis" or "Lewis Owen," which may have proceeded from some lingering recollection of a former shipmate of that name. The witness continues:—"Arthur Orton was made steward a few days after leaving London. He did not remain so the whole of the voyage; only two or three weeks. He then became butcher again.

The voyage was a long one of five months, and Arthur was in charge of two Shetland ponies and some ferrets for one of the owners of the vessel, Mr. Chapman. After he ceased to be steward he took the position of butcher again." The witness never saw him again after he went ashore until this last May. The vessel went on a voyage to the East Indies from Hobart Town, and was lost in Ellis Straits in June, 1853. He says, "I recognize the gentleman sitting before me as the man that went out with me in the ship. The man who acted as steward and butcher was not, that I saw, marked with the small-pox, and did not wear earrings. It is more than twenty years since I saw him. We were frequently together on board. Never saw him before the voyage. I did not notice that his ears were pierced. I did notice that he had rather a twitch in the eye—one eye, I don't know which. His hair was not curly." Then he says, in answer to a question put to him, "It is a common thing for sailors to wear earrings." He says he not only remarked the twitching in the eye, but he made an observation about it to some of his ship-mates. He saw Arthur Orton every day, although when he was a butcher their duties did not bring them so much together. Slept in the third berth from him in the same compartment. He appeared to him to be between nineteen and twenty. He might have been more, or perhaps not so much, but he should have taken him to be about that age. He was a stout man at the time, and was promising to be a stouter man. Has seen his arms bare, but never observed any mark upon them.

Such is the evidence, in addition to that of Dona de Hayley, and the witnesses from Australia, adduced in support of the personal identity of the defendant with Arthur Orton. But that evidence is met by a strong body of evidence on the other side, before entering on which, however, I have to make one or two observations. In the first place, you will find, when you come presently to the witnesses for the defence, that Arthur Orton is sought to be distinguished from the defendant in two or three important particulars. First, with regard to certain parts of him, his feet and hands; secondly, with regard to certain marks which are said to have existed upon Arthur Orton; and the mark most relied upon, if not wholly relied upon—for, although something is said about a mark on the hand, that seems to be but little insisted upon—is a scar on the face. Now, upon that, before we dismiss the case for the prosecution and enter upon the evidence for the defence, an observation presents itself on the conduct of the case for the defendant. There were called for the prosecution a large body of witnesses to show that the defendant was Arthur Orton, and throughout the whole of the examination of that body of witnesses there was no suggestion made from the beginning to the end of any scar upon the face. In addition to which the defendant

has also upon three occasions given his recollection of Arthur Orton. Neither in his account of his intercourse with Arthur Orton, which I shall have to read to you when we come to the Australian part of the Arthur Orton case, nor in his affidavit occasioned by the statements in the Australian newspapers, nor in the letters in which he describes him—in none of these reproductions of the defendant's memory of Arthur Orton does he say he had a scar on the face; nor did his learned counsel in the whole course of the cross-examination of this body of witnesses ever ask a single one of them (while he asks them all about pock-marks) a single question about the scar; nor is it until some of the witnesses for the defence have been examined and got rid of that a witness suddenly springs up and says, "I remember his having an accident; I remember his face being cut; I remember its leaving a scar; I dressed it, and can undertake to say that scar must have been indelible." I cannot but express my opinion that if this fact had been intended to be relied on, it should have been put to the witnesses for the prosecution.

The first witness called for the defence was Mr. William Samuel Page, the owner of vessels in the river, as the defendant also mentions in one of his letters. He states, that having been a wharfinger and lighterman at Wapping all his life, he knew Arthur Orton up to fourteen years of age. He describes him as a remarkably fat boy, and as having high cheek bones. That is one of the peculiarities of Arthur Orton of which we have heard nothing from the witnesses for the prosecution, and as to which nothing was asked of them, but now the witnesses for the defence make his high cheek bones a prominent feature. "He was a remarkably fat boy. He had high cheek bones, rather light eyes, and was altogether a most ungainly built boy. The last time I saw him, as near as I recollect, was in 1851 or 1852. The Exhibition year brings it to my memory. He had the same features that distinguished him when I knew him at a younger period"—that is before he went to sea. Next Mr. Page speaks of the large hands and feet, and then he says, which certainly strikes one as strong, considering how many witnesses have sworn to the identity, that there is not the slightest resemblance between the defendant and the Arthur Orton he knew. He says Arthur Orton's hair was lighter than the defendant's by several shades; as light as the hair shown him (which was the piece which came from South America), and on looking at that he says it is not unlike it. "Eyes, light blue; cheek bones high; face tolerably well covered with fat, very fat; the very opposite to a long, thin face. He was a remarkably fat boy. In 1851 or 1852 he was not so fat, but still a large bony fellow. He had large bones. His feet were large in every way, long, and if I may use the term, flat-footed, not having the spring in the foot that there is in many men, flat in the middle. He



had a bad tread, particularly with the right foot, and was slightly in-kneed, and walked in a slouching way as if slightly knock-kneed, the right leg most." It is to be noted that in this last particular the witnesses for the defence concur with the witnesses for the prosecution. I sometimes almost think I am reading the evidence of some of the Carabineers about Roger Tichborne, when I read this account of Arthur Orton's walk and knees. Then the witness says "the bones of his hands were large; he was a remarkably large-boned boy. His hair slightly curled at the end under his cap; I am inclined to think outwards. I mean by flat-footed, splay-footed; having no spring in the instep, a bad-walking man. He had a remarkable foot, a wonderfully large foot; no instep; a very heavy gait, a kind of dragging his feet behind him. A remarkably heavy gait. He had no life in him. He had St. Vitus's dance. When the boys stopped him in the street, and said, 'Here he comes,' that would at once bring on the fit; and the saliva would run out, especially from the right side of his mouth." The witness says he had the small-pox. "I remember his being marked with the small-pox—with red spots; but cannot say for certain whether the pock-marks was left on the face. He wore earrings, but I cannot prove that. I have seen them. I cannot prove who pierced them, but have seen the ear-rings in his ears." The importance of that arises from this, that the defendant exhibits his ears, and there is no trace of the ears having been pierced.

Then a witness of the name of Sallaway, a sail-maker, says he was a playmate of Arthur Orton until 1847, and they had many games together. "He was a stout lad, very stout, with clumsy feet and large hands. A clumsily-built fellow altogether. He walked clumsily; had large, long, and broad feet. His hair was a light colour—I should say a silvery white—flaxen. I don't know what you call it. It was a light hair. I cannot describe the colour, but it was not like your hair, my Lord"—Whether he referred to my own hair or wig, I do not know. "It kept like a child's for years—Silvery, almost white, very light. It kept light for years. I never noticed but very little change in it. He went away in 1848. I did not see him till after the Exhibition of 1851. After he came back, I noticed he had earrings in his ears—small gold wires, but I cannot recollect whether he had them before he went away. He was not so stout as he had been. I spoke to him on many occasions, perhaps once a week, perhaps not for a fortnight. One peculiarity of the Orton family was, that the upper jaw seemed to protrude over the lower—a projecting jaw; and the upper part of the skin was lifted up and showed large teeth in front. That peculiarity existed in Arthur Orton." As to his voice, he says—"His voice was softer than the rest of his family. The father was a rough-speaking sort of a man. Arthur was different, quite different. There was a resemblance between the

voices of Arthur and Thomas. One was rather gruffer than the other. Both of them husky. Arthur's rather softer. His hair was sometimes inclined to be curly; he used to go about all rough. His walk was awkward, and so was his running. Slouchy; awkward altogether. I cannot say the knees turned much in; weak on the legs I should call it. He was always on the move. I do not remember the St. Vitus's dance. He had a kind of nervousness. He seemed to have overgrown that when he came back. I recollect the ear-rings; I cannot say I recollect when he had them. My wife spoke first to me of the ear-rings. She asked me if I recollect, and I said yes. I saw them in his ears as he was standing at the door, in 1852. When I say curly hair I mean a little crinkly all over. He did not walk with his feet out straight, and he was weak in his legs. His feet were always the same species of long and clumsy feet, always big. I cannot give any idea what sort of nervousness it was. Arthur Orton's mouth projected over the lower jaw; he had large teeth. The under jaw went under the upper one. I will not be sure whether he wore ear-rings. I think he did. I will not be sure of it, but I rather think he did—wires, a small ring. I never noticed any brown mark on Arthur Orton. I would not swear that I have bathed with him."

John Finnis, a lighterman, went to school with Arthur Orton, and continued his acquaintance with him until he went to sea. He says "that when he came back he had very large hands and feet and a scar across his hand; very deep on the left hand; on the inside. He bade me good-bye, when he went to sea the second time in 1852. At the beginning of 1852 he and I were turned over in a boat in the river. We got hold of the sponson piece of a steamer. It was too thick for me to hold, and my hand came away. Arthur Orton caught hold of the sponson piece and held it, and I caught hold of him. His hand went right round it. He could not have done it if he had not had large hands; it would have been impossible. We chaffed him about his feet. They were very large feet. He was not a person of education. He was dull witted. I remember the screw in his mouth that he had. He had not any acquired knowledge. He could read and write as far as I remember, but he was no scholar. MR. SERJT. PARRY: Have you not said to persons that he resembles George Orton, the old man? In conversation, when it has been talked of whether this defendant was like Orton or his family, have you not said to several people that he does resemble the father in the upper part of his face?—Not to my knowledge; I may have done; I do not remember it. Q. It is your belief that he does?—I say there is a slight resemblance. There is no resemblance between him and the defendant; but there is a slight resemblance of defendant to Arthur Orton's father." He says, "I am speaking about his feet and hands

when he was a boy of fifteen. He was a large boy. He was not called ‘Bullocky Orton.’ Arthur Orton had rather a gruff voice—gruffer than the defendant’s—when I knew him at eighteen years of age. Every one who knew Arthur Orton knew his gait and of the cut on his hand”—It is curious that only two other witnesses speak of it—“He had light brown hair, he was not knock-kneed to my knowledge. He was afflicted with something.” Then he is asked on cross-examination, “Was Arthur Orton knock-kneed or in-kneed?—I do not know what you mean: He threw his feet out. Q. Did he throw his feet out, and his knees in; was that the walk he had?—He threw his feet out; I do not know about being in-kneed; I do not understand the term. Q. Do you not understand when knees knock together? Have you seen a man in-kneed?—I know what knock-kneed is. Q. Was not Arthur Orton knock-kneed?—Not to my knowledge knock-kneed; he threw his feet out. The LORD CHIEF JUSTICE: It may be a term that is not applicable. He might be knock-kneed to a slight degree which you might call in-kneed. When a man’s knees come actually together he is a downright knock-kneed man. You do not often see that, but you sometimes see a little inclination. The question is, was there any inclination of the knees so as to take them out of the straight line?—No.”—As to that, I think this witness is altogether overborne by the weight of evidence—Lastly he says, “He had a twitching and contortion of the mouth. I do not know what St. Vitus’s dance is.”

Peter Godhart, plumber and painter, thirty-three years at Wapping. Says he did not know much of Arthur Orton before he went to sea the first time. After he came back he had many opportunities of seeing him, sometimes two or three times a day. “He was a tall, awkward-shaped fellow—awkward-shaped in every way, large-boned, tall for his age. I remember a sort of twitching in his features that I thought was spasmodic, after he returned, but not so bad as earlier. He had the name of ‘Slobbering Orton’ from an overhanging jaw: he could hardly speak to you without expectorating in your face—what is called dribbling in the mouth—not so much after he came back as before he went away; very trifling after he came back. Both his hands and feet were large. He had a large nose and projecting face—the face generally large; the nose and upper jaw. That is a peculiarity with the Orton family. He had large features. All the family had in a measure. He was called Bullocky. His head was very large in proportion for his age. He was inclined to be a very large man, from his bony formation. He was large-boned. He weighed 13 stone 6 when he came back at seventeen years of age”—That agrees with what the other witnesses say—“He was quite the reverse of a bright boy; he appeared thick-headed and mischievous. He was bright in mischief—teazing children and animals



in the streets. I have seen him strike dogs in the streets unnecessarily. When he returned from sea he had very small earrings on—a plain round ring. He had a low-tone voice, and it appeared to break into huskiness after three or four words, as if he had an affection of the throat. He had large hands and feet: his arms long from the shoulder to the elbow; fleshy hands; bones well covered, not fat. If he walked quick, or ran, his knees turned in—I should say from weakness of the knee. He threw his feet out a little—they turned out, but not much. Arthur was more like Mrs. Tredgett than Mrs. Jury; there is a family likeness in them all. He was about eighteen when I last saw him.” Being asked, on cross-examination, “Could you give us any more visible idea of what you mean by the way he walked?” he says, “I do not know I could more particularly: the right leg as he walked went in a little, as though it had not strength in the knee to support the body; still, he was not what you would call knock-kneed, because if he was standing you would not observe it”—That agrees certainly in a very remarkable degree with some of the evidence which I shall have to read to you by-and-by about Roger Tichborne. It would really seem as though the witnesses on both sides had agreed upon the very terms they should use, and the description they should give. Then he says he was rather short-necked, but his shoulder-bones appeared to project above the shoulders, which made him look shorter-necked than he really was. The shoulder appeared as it stood up like a ridge; the head being sunk in lower than the bone gave it that appearance.

John Winer, a retired shipping fishmonger, having lived at Wapping upwards of thirty years, says, “Arthur used to come to my shop when a boy until he went to sea. He was a thick-headed boy—a plump boy; had not the slightest resemblance to defendant. I did not see him after he went to sea the first time, when he was about sixteen years of age. I recollect him perfectly well—his general appearance, his features, and so on. He was thick-mouthed, and had large blue eyes; lightish hair, to the best of my recollection. I never noticed he was knock-kneed: I did notice that he spread his feet out in walking a little. His hair was nothing at all like the defendant’s—lightish hair, bright light hair.

William Weston, boot and shoemaker, lived in Wapping four years, including 1851, 1852, and 1853. He says, “I saw Arthur frequently in the shop in 1851 and 1852. The defendant is not like Arthur Orton. The defendant’s voice is not a bit like Arthur Orton’s, who was a gruff-speaking man. I saw him I dare say about a dozen times during the time I was in Wapping—three years. Arthur’s hair was similar to his brother’s”—the witness referred to Charles Orton, who was in court—“that is, very light brown hair. His hair was not in the least curly—except that when it was long it

might turn up through the pressure of the cap ; it was not inclined to be curly. There is no trace of Arthur Orton's voice in the defendant's."

This witness was one of many who had attended a meeting at a public-house in Wapping, kept by a man of the name of Creighton, at which the friends of the defendant, and those who were disposed to be witnesses in his favour, had been invited to attend, and where speeches in favour of the defendant were made. But what I am about to say applies not only to the meetings at Creighton's, but also to the meetings that have been held in various parts of the country, and still more so to the public meetings.

We know that for months a system of agitation was kept up throughout various parts of the country ; that, pending the present proceedings, speeches were made at these meetings, which persons were invited to attend, as if it had been some matter of public and national concern. Speeches were made of a highly inflammatory description, the whole purpose being to excite a storm of popular feeling, if possible ; and we know that this systematic agitation has not been unsuccessful. Witnesses were invited to attend at those meetings, or, if they were not invited, did attend, and were naturally carried away by the excitement which prevailed, especially when it was found that any one who said anything in favour of the defendant was received with enthusiasm and applause. By that means witnesses were drawn into the vortex of this popular excitement, and the natural consequence may be either that they are induced to come forward with statements untruthful or unreal, or that they are induced to colour or exaggerate facts to which they are enabled to speak, so as to make them available and useful for the cause in which they present themselves. And, to one's great regret, we find that gentlemen of station have not been unwilling to lend themselves to an agitation of this kind, to go about the country making violent speeches, attacking every one who did not happen to be on the side of the defendant—acting, as it were, at these public meetings, at which the defendant was exhibited for money, as the showmen of the exhibition, and doing everything they possibly could to create a storm of popular prejudice and passion which should sweep and carry everything before it, and prevent you, when you came to the discharge of your duties, from bringing to it the calm judgment necessary to its performance, or possibly operating upon your minds in the way of making you shrink from the discharge of your duty, lest you might incur public disapprobation. I am quite sure no such effect will be produced upon your minds. But I regret that there should be any necessity to warn you against it—I do not mean warn you in respect of doing your duty—I mean warn you against accepting with unreserved confidence and reliance the statements of witnesses who have been operated upon in this manner. Because there is the danger.

There is no danger that twelve honest, independent gentlemen will be influenced by any other consideration than a desire conscientiously to discharge their solemn and important duty. The danger is that witnesses—unconsciously to themselves, perhaps—have had brought to bear upon them the influence of public passion and prejudice, and so may have come to give their evidence without that regard—that solemn regard—for truth which ought to prevail with a man when he comes into the witness-box. I can only deeply regret that these things were allowed to go on. They grew up by degrees, partly because, during a considerable time that this scandal was going on, this Court was not sitting, partly because one could not help feeling that when a man has the powerful action of government brought to bear upon his case, and that the prosecution is conducted at the public expense, while his defence is not—while it may be he is not a man in wealthy circumstances—it would be extremely hard to debar him from the opportunity of appealing to public sympathy to furnish him with the means of prosecuting his defence effectually; and anything kept within legitimate bounds, which had that for its object, we should not have thought of interfering with. Therefore there was no interference at first. But at last it grew up to such an intolerable abuse that it made one regret that we had not from the earliest moment put a stop to such scandalous proceedings. I do hope no such case will ever occur again in the annals of English jurisprudence; but if it should, if similar circumstances should ever again arise, I trust that what was suffered to take place in this case will not be considered as having established a precedent to be followed, but as a warning as to that which should be avoided. It has had a most mischievous effect. It has created and excited public passion to an extent which has never been known before in any case which has come within the province of our courts of justice; and I trust such a thing never will be allowed to come into existence again, but that, if the necessity should arise, it will be put down with a strong and unhesitating hand.

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## ONE HUNDRED AND EIGHTIETH DAY.

*Monday, February 16, 1874.*

THE LORD CHIEF JUSTICE: When we broke up last Friday, I was calling your attention to the evidence for the defendant on the subject of his identity, or non-identity with Arthur Orton; and this part of the case is one which certainly deserves serious attention, because the defendant has brought forward before you upon this point a very strong body of evidence—the evidence of between fifty and sixty witnesses, most of whom had the opportunity of knowing Arthur Orton, and therefore are competent to form a judgment, as far as opinion goes, as to whether the defendant is Arthur Orton or



not. The evidence of such a body of witnesses is certainly deserving of serious and respectful attention, because it would be idle to suppose that the bulk of the witnesses, at all events—there may be a few open to exception—are not perfectly honest in the judgment they have formed, and in the opinion they have come here to express. Some of them may, perhaps, have been influenced by the excitement and agitation which has been going on in Wapping and elsewhere, and which, through the enthusiasm which it has created, may have induced some of them to go further than, if they had not been subject to that excitement, they would have gone, but they are nevertheless witnesses whose evidence is entitled to respectful consideration at your hands. On reflection, however, I think it would be useless to go through them one by one, and I do not propose to do it. We may take it that there are certain things in which they all agree, and with reference to those things it may be enough to say that there are this number of witnesses who speak. They all agree that Arthur Orton was, as a lad and young man, a great, big, heavy, hulking fellow. They agree that he had large hands and feet, disproportioned to his height and size, and his general formation. They agree that he had high cheek bones, a heavy brow, and large eye-brows. We may take those to be characteristics which they all assign to him. Several say he had a heavy mouth, and projecting teeth, which the defendant has not. But then, as the defendant has lost his front teeth, this peculiarity scarcely affords a satisfactory comparison. Then there are a great many who agree that he was in-kneed; in connection with which, I think it right to observe that those of them who spoke with the greatest detail with reference to that point, seem to agree in this, that he was in-kneed more from weakness than actual conformation of the limbs, and that it was in walking that it particularly showed itself: a fact by no means unimportant when we come, by-and-by, to the evidence of the Carabineers and other witnesses with reference to the formation of Tichborne. We shall find they agree pretty much on similar facts, and use almost the same language. All these witnesses agree on this point, that in their opinion the defendant is not Arthur Orton, and their great number certainly makes them a very formidable body of testimony. But there are some of them who speak as to certain facts, which, if established, render it impossible that the defendant can be Arthur Orton, and the evidence of those witnesses must be gone into more minutely; we cannot deal with it in the mass, and I must call your attention to what those witnesses have said with greater particularity. There are certain things, as to which it is said Arthur Orton had peculiarities which the defendant has not. Thus, for instance, it is said that Arthur Orton had very large feet, while those of the defendant are of moderate size. It is said that

Arthur Orton had marks which the defendant has not; and, on the other hand, that the defendant has marks which Arthur Orton had not. It is said that Arthur Orton had a scar across the left cheek; that he had marks of small-pox; that he had a scar on his arm from the bite of a pony. And there is another matter which is very well deserving of attention. There are several witnesses for the defence, who assert that Arthur Orton had his ears pierced, and that he wore, not ear-rings exactly, but small wires into which ear-rings had been, or might be, hung; and that this was first observed when he came back from going to sea the first time, a thing not altogether unlikely to occur, because we know that though Englishmen do not, like foreigners of that class, frequently wear ear-rings, sailors occasionally do. Of course, if it is a fact that Arthur Orton came back after his first voyage with wires in his ears, and the defendant, as it is stated, has no marks of his ears having been pierced, that would be a very strong circumstance to distinguish him from Arthur Orton. Let us see, on these points, who are the witnesses, and what they say.

First as to the feet; in addition to the general evidence as to Arthur Orton having had very large feet, which the defendant, it is said, has not, two witnesses point to a more specific comparison. The principal witness is a man of the name of Yeats, a boot and shoemaker, who says he made boots and shoes for Arthur Orton till he went to sea in 1848, at which time Arthur was fourteen. He says that while the size of the defendant's feet is what in the trade is called "sevens," Arthur's, as early as the age of fourteen, were already tens, an extraordinary size for a boy. In proof of this statement, he produced a last, which he represented as having been Arthur Orton's, and which certainly was of unusual dimensions; its size having been increased by pieces of leather tacked on it by small brass rivets, which he said he had affixed to it from time to time, as the size of the foot increased. But the evidence of this witness was rudely shaken by that of two competent members of the trade, who proved that the brass rivets, by which the pieces of leather were affixed to the last, were not introduced into this country till many years after Arthur Orton left it, one of the two witnesses having been the first person in the trade who introduced them into this country from abroad. The last, too, when produced had no name on it, and the witness admitted that it was the largest in his shop. He had taken it out of 250 others. He said he had made boots and shoes for the rest of the family, but could not produce the lasts of any of the others. On the whole, the evidence of this witness was anything but satisfactory.

Another witness in the trade, Weston, though he had never made for Arthur, said he had often observed his feet, and he was sure the size was "elevens." He says, "I noticed his feet. They were of

very large size; what we call elevens. That is not the extreme largest of all. There are two sizes larger. I did not take the measure of Arthur's feet, I can tell the size without measuring. I took the measure of his feet by my eye to be elevens. That was about the size of the boots he was wearing. I never supplied him with any boots; but I mended his father's, who was about the same size. I recollect only Charles and Arthur of the sons. Charles' feet were somewhere about sevens."

So much for the comparison of the feet. Next as to the scar on the cheek. We have, as to this, in the first place, the evidence of Weston, whom I have already referred to, who states that he actually saw the accident which occasioned it. He knew Arthur Orton, and he saw the fall through which the accident occurred; he says it was at the end of August 1851, or 1852; he is not sure which. Arthur Orton was riding one pony and leading another; the pony threw him; he was cut on the left cheek, from the lower corner of the nose to the corner of the eye, to the edge of the cheek bone, and it was a serious cut. He saw him after that, and the cut still remained, and the mark caused by it. The accident, he says, took place in the presence of a great many persons who saw it as he did; he saw the cut, he says, a time or two after the plaster was removed, and as late as 1853. That must be a mistake in the date, because Arthur Orton had gone away at that time. Such is the statement of Weston. He says that Arthur told him he had had a stitch or two put into it. That cannot be true, and either he has imagined it, or Arthur Orton told him a falsehood, if Moore, the man who says he actually dressed it, is right, for he says there were no stitches put in it at all. Mr. Richard Henry Moore, a chemist, but who at the time in question was assistant to a Dr. Miller, says that at the time when Thomas Orton and his father dealt in Shetland ponies, he had a friend who wanted some ponies, or a pony, and he desired Arthur Orton to go with two of the ponies on approbation, and that Arthur was thrown from one of the ponies on which he was riding, and had a cut across the face, and was brought to him to have the wound dressed, and he describes the wound as extending from the end of the nose to the left eye, across the cheek; "and it left a scar," he says, "the whole extent of my hand." He says he strapped up the wound with ordinary diachylon plaster, having stopped the hæmorrhage with an appropriate remedy, nitrate of silver, and that he dressed it again, and that there was a scar which would certainly be indelible. If that is right, the defendant certainly is not Arthur Orton, because there is no such scar on the defendant. Those are the two witnesses who speak to the actual thing itself. There are other witnesses who say they saw the marks afterwards; but when we come to their evidence we shall find discrepancies of a very serious character.



The next witness is John Hayward, who is a boot-maker in Wapping. He says he knew Arthur Orton from a boy; he knew him before he went to sea, and when he came back from sea, and till he went away the second time; and he says he had a mark like a cut across the cheek, from the corner of the mouth. He does not recollect whether it was on the right or left side, but there was a cut across one of his cheeks, from eye to the mouth. He speaks also of a straight cut—a sort of down cut across the temple. What he means by that I do not know. The strange part of this evidence is this: Weston, who says he saw the accident, fixed it at the end of August, 1851 or 1852; he is not quite sure about the year, which is very natural after so many years; because a man may recollect a circumstance happening, and yet not be able to speak to the particular year. Mr. Moore, who dressed the wound, fixes it distinctly in 1852. Now, this witness Hayward says the mark was there before Orton first went to sea (and we know that he went to sea in 1848). But that is quite irreconcilable with the evidence of Weston and Moore, who both fix the accident in 1851 or 1852, which was after he came back from sea the first time. Then this witness speaks to another fact which may be material in another and very different part of the case. He says he was present when he saw another boy throw an oyster shell at Arthur Orton, and the oyster shell struck him obliquely on the back of the head, as a shell will when you spin it through the air; on coming down it cuts the air obliquely. The shell struck him on the back of his head; it cut the back of his head open—at least to such an extent that blood flowed from it. Whether that was the cause of the scar we have heard of on the back of the defendant's head, or not, is a matter you may have to consider by-and-by.

In like manner, a witness of the name of William Myers, who says he knew Arthur Orton from 1842 or 1843 to 1848, and used to see him two or three times a day, speaks of his having a cut on the left cheek, and that several pieces of sticking plaster were put over it. He says it was when he was about twelve or thirteen years old. "When I last saw him there was a scar from the cut." That would be in or before 1848, which, of course, would be before he went to sea. On cross-examination, he says Arthur Orton was about twelve years old when he met with the cut. It was about two years before he went away. "I remember the scar—a cut in the face—before he went away." Now, this evidence, again, is entirely irreconcilable with the evidence of the two first witnesses on that subject.

So, James Brunsden says he knew Arthur well before he went to sea, and after he came back. He says he had a scar on his cheek when he left England. He says he had a conversation with him when he came back; he did not notice the scar then.

Thomas King, another witness, says, "To the best of my recol-

lection, he had a scar down the side of his cheek." He says, "It came from the corner of the eye to the corner of the mouth, down the cheek. It came down very near towards the lip." He says he does not recollect anything of it only between the time when he came home from sea after the first voyage, and the time he went away in the 'Middleton'—between his coming home and going out again. He does not recollect it before he went away the first time. So that his evidence would agree with that of Weston and Moore.

Then George Champion, who used to have dealings with old Orton for about seventeen or eighteen years, and who knew Arthur from a baby until 1852, says he had a cut on the left cheek, which was plainly perceptible to the sight. He does not fix the date.

On the other hand, there are three or four witnesses for the defence, who say they never saw any scar. Billing, for instance, says he knew Arthur well up to 1852. He never saw any cicatrix from a cut or wound.

Grady, another witness, who knew Arthur from 1846 to 1851 and 1852, never knew of a scar on his face.

James Marshall, the boot-maker, who knew Arthur Orton before he went to America and afterwards, says he never saw any scar; and the rest of the witnesses are not asked anything whatever about it. Now if the scar was so visible, as some of them represent it, it certainly is a striking thing that out of fifty-eight witnesses, eight only speak of the scar; but I do not say that because the others may not have noticed it, it may not have been the fact that there was a scar.

So that it comes to this: out of all this body of witnesses, some fifty-eight in number, there being but eight who speak about the scar, even of these the evidence is conflicting, some of them saying he had the scar when a boy, before he went to sea; whereas the witness who says he saw the accident, and the doctor who dressed it, say it was in 1851 or 1852, which certainly is a striking discrepancy.

And the evidence is open to this observation. The defendant has three times given his description of Arthur Orton's face. He did it in his affidavit in 1868, when first the Orton case was opened before him. He did it in the letter to Rous. He speaks of their starting this Arthur Orton theory, and says: "The brother of these young womans is dark, and deeply pitted with the small-pox:" in his affidavit he says, "he was slightly pitted with the small pox;" and when he is examined on the trial, he says he was "pitted with the small-pox." In neither of these instances, when he is speaking of the man and the marks on his face, does he mention any scar. Another thing which, I must say, strikes me forcibly as to this is that, as I have already observed, all the witnesses from Wapping, called on the part of the prosecution, were allowed to leave the box without the learned counsel for the defendant putting to any one of them a single

question relative to the scar, which leads fairly to the conclusion, that it was not until late in the case, when Weston and the witness Moore came forward, that the learned counsel for the defendant had heard about this scar. Yet if Arthur Orton had any scar, the defendant, who says he knew him so intimately, must necessarily have been aware of it, and would have instructed his advisers to make a point of it from the beginning. Well, in consequence of the witnesses not having been cross-examined as to this, the counsel for the prosecution were allowed to call back some of the most material witnesses as to the identity of Arthur Orton. Amongst others were Miss Loader and Mrs. Johnson; to the latter of whom he had proposed to keep company with him, and with the former of whom he had actually kept company for several months. Now, one would certainly think that a young woman who was keeping company with a man with a view of being his wife afterwards, and who must have had abundant opportunity when walking with him of seeing his face, must know—especially as the accident is represented as having happened at the time the courtship was going on—whether he had a scar across his cheek, which was visible to the eye, or not, and she swears she never saw any; as did also Mrs. Johnson; and so says Cronin, another of the witnesses called from Wapping, who spoke to the identity of the defendant with Arthur Orton. They agree that he had no scar. So much for the scar. It stands doubtful upon that evidence, and I suppose by-and-by we shall have to solve the question as to which set of witnesses to identity is right and which is wrong, by looking to the facts, as established by the evidence, to see which way they incline the scale.

Next as to the small-pox marks. It is said that the defendant has no marks. Then, as in the case of the scar, if Arthur Orton was marked with the small-pox, the defendant cannot be Arthur Orton.

I have already read you the evidence of Mr. Page, the lighterman, who knew Arthur Orton, and spoke to him many times, as late as 1852, which is before Arthur Orton finally went abroad. He says he remembers his being marked with red spots; but that proves nothing, because a person recovering from small-pox, though it might not be severe enough to leave pit-marks, would have red marks on the face during the time of becoming convalescent. He says he remembers his having red marks, but he cannot say for certain that pock-marks were left.

Then comes Joseph Williams, who was apprenticed, in 1844 or 1845, to an engineer in Shadwell, and had frequently to pass Orton's shop to go to Hoare's brewery and the steamboats. He says he bathed with him and his two brothers about a dozen times before he went to America. He says, "I remember his having the small-pox.



I could see the marks when he was naked for bathing; he was marked with small-pox when grown up to a man—the last time I saw him.”

Then there is a witness of the name of Billing, who knew Arthur Orton up to 1852 very well; he used to see him three or four times a day when he came on board vessels with meat. He says, “I am under the impression that he was slightly marked with the small-pox; but I should be sorry to state it as a fact.”

Then Henry Steer, who was formerly head barman at the ‘White Swan’ at Ratcliffe, knew Arthur Orton before he went away in 1848. He says he was scarred with the small-pox; he had several scars. He did not notice them when he came back in 1851. He was then a good deal with him. He went with him three or four times to the Exhibition which was going on in that year. He went with him on some excursions. He did not then notice the marks. This would rather look as if the marks had disappeared at that time, because, although he noticed them before the first time Orton went to sea, he did not notice them in 1851, after he had come back.

James Cockshott, who was formerly in the employ of the Steam Tug Company, whose office was opposite old Orton’s shop, says he knew Arthur intimately from the time he was four years old, until 1851. His statement is that he was pitted with the small-pox a very little; that he had five or six light spots on his face.

Then Joshua Westmorland says, he merely knew Arthur Orton by occasionally seeing him on the pier-head at Wapping. He says he had two or three marks where he had had the small-pox. He places them on the right side of the nose, and just down the bridge of the nose. He says he was very slightly marked.

John Pells is a lighterman, and in 1850 he worked opposite the Ortons, and knew Arthur till 1852. He had business with him, and remembers his going to sea; he says he was pitted slightly with the small-pox. “Between 1846 and 1847 I first noticed the marks of small-pox on him.” When he first had it we have not got. I suppose somewhere about that time. We all know he had it, but the precise date has never appeared. One of the previous witnesses, however, Joseph Williams, says he bathed with him before he left for America, which was in 1848, and he had the spots then.

George Champion is a ship-master who knew Arthur Orton well. He says, “He had some rough kind of features about him. Whether it was small-pox, or what it was, I do not pretend to say, but he was roughly marked in some way or other. Besides these marks there was something about his face not smooth.”

Then Augustus Collingridge, master-mariner, who had business transactions with old Orton from 1845 for about ten years on and off, and who told us he had four or five interviews with Arthur Orton about a watch alleged to have been taken from a French master

mariner, and in which affair Orton was said to have taken a part, says Arthur was pitted, on the upper part of his face, particularly above the mouth. He says, "I noticed he had one deep pit on the top of his nose. He was not so deeply pitted about the face. You did not see so much of it unless the light fell on it about the cheeks." He says he saw this somewhere about October, 1851.

Another witness, Thomas King, says "He was slightly marked with the small-pox. I can recollect him from the time he was quite young until the time he went away." He says he had the marks before he went away the first time. "When I recollect the small-pox he was eight or nine years old." I cannot help thinking that must be a mistake, because no witness called throughout the case has represented that he had small-pox at so early an age as eight or nine years old.

At the same time there are several witnesses for the defence, who, being asked the question, though they had the same opportunity of knowing Arthur Orton as the witnesses who speak to the small-pox, say they had not remarked anything of the kind.

William Webb, who knew the Ortons and the two boys, Thomas and Arthur, never noticed any marks on Arthur's face.

Christopher Dix, who became acquainted with Arthur before 1848, and used to buy meat of old Orton, knew Arthur after his first voyage and never noticed any marks upon his face at all.

Abraham Bush, in like manner, never saw any marks, and he knew him nine years before he went to sea, and knew him when he went the second time.

Eliza Hemmens, who was a witness as to the non-identity of the defendant, spoke strongly about it. She knew the family well, and says she never noticed small-pox or any marks on his face. Elizabeth Lancaster, another witness for the defence, says the same thing.

The same observation applies to the marks of small-pox as applied to the scar. It is a strange thing if these marks were visible, that out of so many witnesses only ten should have noticed them; still more so that the woman whom he was paying his addresses to, and who was in the habit of walking with him constantly, should not have seen any such thing.

Then there are two or three witnesses who speak to another thing likely to leave a permanent mark, if it was attended with the consequences which one of those witnesses speaks to, and that is the bite of a pony.

A man of the name of Edward Joseph Wakeling, who was formerly an articled pupil of a Dr. Doble, of Old Gravel Lane, says he knew Arthur Orton in 1851, and attended him on one occasion for a bite from a pony in that year. The gentleman he was articled to, and who treated Arthur the rest of the time, is dead. The witness says the bite was on the left arm, two inches above the elbow joint.

The treatment occupied a month, and on one occasion he cauterised it. There were marks of two teeth, but one was superficial. He says he saw Arthur when the wound was sloughing. "It was rather a large hole; it would leave a scar that would be permanent." Well, if that fact of the bite of a pony, and of a permanent scar left by it, can be relied on, it would be conclusive. The witness tells us the wound sloughed and it had to be cauterised, and if he is right in saying that where the flesh and skin is cauterised in that manner the scar would be permanent, the defendant has no scar. But Mr. Wakeling was about as unsatisfactory a witness as any one would wish to see, or not wish to see, in a court of justice. He was the gentleman who said he had burnt Dr. Doble's day-book, so that it was impossible to find any entry of this attendance, and a quantity of other books, the Bible amongst them, without giving any satisfactory account of why he did so; that he did not know what had become of his wife; that she was on the parish; and in short, gave an extraordinary account of himself, an account which would hardly make him a credible witness in your estimation. Not having sufficient acquaintance with medical science to know, I cannot say whether it was right or wrong to cauterise the wound in the way he says he did. He says such a wound so treated would leave an indelible scar. We have had no other evidence on that subject; possibly it was thought you would not believe his statement, and that it would be useless to go further into the matter.

There are two other witnesses who prove that Arthur Orton was bitten by a pony, but then their description of the bite falls altogether short of what Wakeling stated; and it is perfectly consistent with possibility that the bite may have occasioned inconvenience at the moment and a sore place, but that the sore was one that would heal over, and by no means leave an indelible scar.

John Hayward simply says, "He was bitten in the arm by a pony before his first voyage."

Then comes William Jarvis, who was the son of John Jarvis, of Bridport, of the Wagga-Wagga will, and who was called by the defendant. He remembers that Arthur was bitten by a pony in the arm. He says, "I saw the bite at the time on the left arm above the elbow. I was there at the time; there was a red mark right round. The teeth squeezed up the skin; the flesh was torn right round. I saw no blood." He says that the accident happened in 1846. That is a very different thing from a sloughing wound and the application of caustic for the purpose of burning away the vitiated flesh. Such a wound would not be like a wound from sharp incisor teeth; the teeth of horses are for the most part molar teeth, to enable them to grind their food; and, possibly, there having been what the witness calls a squeezing up of the skin, after a day or two it may have left no mark. However, that I do not profess to form any judgment about, or offer any opinion upon.



One witness, Joseph Manning, speaks to a scar on the hand from a cut ; but one only out of the numerous body of witnesses, namely, John Finnis, confirms him. He says he was at school with Arthur Orton. He saw him last in 1847 ; he bathed with him three or four times. He says, " I saw a mark on his hand through the cut of a knife. He explained that he cut himself from having slipped and fallen down in the shop. He held out his hand and said, ' See, there is a scar I shall carry to my grave. ' " These two are the only witnesses who speak about that.

Next as to Arthur Orton having worn ear-rings. A considerable number of witnesses speak to the fact. Mr. Page, the lighterman ; Sallaway, the sailmaker, a playmate of Arthur's, who said he knew him after his return until 1852, speak to having seen him wear ear-rings. Peter Godhart, who says he used to see Arthur Orton almost daily after his return from his first voyage, speaks very positively to the fact of his having worn, not, indeed, ear-rings, but small wires.

Henry Steer, the barman at the ' White Swan,' who says he knew Arthur well, says that he came to see him after his return in 1857, and that he then had ear-rings in his ears, whereupon the witness told him he looked more like a woman than a man, and made him take them out.

George Case, a stevedore, speaks positively to having seen ear-rings in Arthur's ears ; but he had no intimacy with him beyond passing the time of day, and could have little reason for paying particular attention to his ears.

John Hayward, who served his time to a Mr. Lane, a boot-maker, next door to the Orton's, says he is certain Arthur constantly wore the wires after his return from sea.

Thomas Grady, a smith, who knew Arthur both before he went to sea and after his return, speaks also to the fact. He was not, however, a very satisfactory witness. First, he had a very strong remembrance of Arthur wearing ear-rings—then only a slight one ; and lastly, he would not swear to it at all.

James Begg, an engineer's labourer, an inhabitant of Wapping, who knew Arthur till he went away finally, and Christian Penny, at whose shop Arthur Orton occasionally bought caps, speak to his wearing wires. Thomas Newman, who worked at the Hermitage Wharf, remembers that when Arthur Orton returned from his first voyage, his ears were pierced, though he never saw him wear ear-rings or wires.

Collingridge also says Arthur Orton wore ear-rings, and that he told him he had been in the Spanish main and had had his ears pierced there. But this statement is calculated to raise a doubt of the accuracy of the witness, as Arthur Orton never was in the

Spanish main. The witness says he knew the brothers George and Edmund, "though," he adds, "perhaps I did not know which was which." Both George and Edmund were sailors. Is it possible the witness was confounding between the brothers?

We turn now to the evidence adduced to show that, whereas the defendant undoubtedly has a brown mark on his side, Arthur Orton had no such mark. This evidence to negative any brown mark on Arthur Orton is very material, because that the defendant has a brown congenital mark is admitted on all hands; a real mark and not a simulated one. And if he has a mark and Arthur Orton had none, it follows as a necessary consequence that he cannot be Arthur Orton. But, then, can we altogether rely on the statement of these witnesses? Not that I have reason to suppose that they are not speaking according to their belief; they are respectable people, and we must receive their evidence accordingly.

Now there are two or three witnesses who say, we bathed with him as a boy, and never noticed any brown mark. At the same time it is quite possible he may have had a mark, and they may not have seen it. The colour of the mark is not a deep colour; it requires observation to see it, and a boy might swim about, having a mark of this kind, and yet the others not observe it. But Jarvis is a more important witness in that respect, because he tells us that Arthur, when a boy, was taken down on some occasion by his mother to Bridport, in the vessel of old Jarvis, the master mariner, the witness's father. They went principally for Arthur's health. He says that Arthur slept in the same bed with him, that he has seen the boy undressed, that he has bathed with him several times, and never saw a mark on him at all. It is evidence entitled to consideration; because if he is right, the defendant cannot be Arthur Orton.

Then Abigail Cocklin, cook to old Mr. Orton, says that when Arthur was a little boy between six and seven he had a small red mark on his side. That is nothing to the present purpose.

Gentlemen, it was suggested that all this evidence relating to the cut, to the ear-rings, and to the pock-marks, applied to the other brother, Edmund, who had been to sea, and had been a sailor, and who was about in Wapping very much at the same time as Arthur, and who, it was said, wore ear-rings and was pock-marked, and to whom the statement about the accident it is said applied also. The witness Collingridge tells us Arthur was like Edmund. And, like Arthur, Edmund went to sea, and was occasionally backwards and forwards at Wapping. Is it possible that the witnesses may be confounding one brother with the other? It is proved that Edmund wore ear-rings; but there is no proof that he was marked with the small-pox or had a scar on the face, and it would be wrong to assume that the fact was so; but the facts of the case when you resort to

them to turn the scale, in the conflict of evidence as to identity, may possibly lead you to think either that this evidence is untrue, or that it is founded on some such mistake as was suggested.

These are the principal things. There are one or two other points established which will be important in another view of this case. First, the witnesses for the defence agree with the witnesses for the prosecution that Arthur Orton had St. Vitus's dance. You may, therefore, consider that as a fact, established beyond all possibility of controversy; and as far as we know, he was the only member of the family who had it. He got it from fright—a fire broke out, and the boy suddenly awaking was terrified at seeing the flames—and had the malady beyond all question. Another thing which these witnesses speak to is the effect of the St. Vitus's dance. In his early youth it affected his limbs and body; at a later period it appears to have affected his face principally, and he had a movement of the lower part of the face at first, as well as of the upper part. At last it got better, but still left him a twitch of the face, which some of them say included the eye and the eyebrow; a thing which we shall have to consider when we come to compare the three personages—the defendant, Roger Tichborne, and Arthur Orton; and I reserve calling your attention to the effect of this evidence on the question of identity till I come to that part of the case. I have already called attention to the fact of his being in-kneed, and that the witnesses ascribe it to weakness. Here, I shall again have to call attention to the language they use when I come to the other part of the case, and have to compare the personal appearance of the defendant with that of Roger. We shall then have to take the three in juxtaposition, and see how far the description of Arthur Orton given by the Wapping witnesses agrees with the personal appearance of the defendant, and with the description given by the Carabineers and other witnesses as to the peculiar conformation of and personal appearance of Roger Tichborne.

We may take it therefore that there is, to say the least, a strong body of evidence on the part of the defendant. The witnesses, I will not say all, but most of them, are respectable persons, who gave their evidence in a way which is entitled to respect. And there being this numerous body of witnesses in whose judgment the defendant is not Arthur Orton, I should add that they appear to be as competent to form a judgment as any of the witnesses for the prosecution, if I except Miss Loader. Some, again, go beyond mere opinion, and say they observed these distinguishing marks which the defendant has not; thus leading your minds to the conclusion that he is not Arthur Orton. In this conflict of opinion, if it rested there, it would be very difficult, in a criminal case, where the prosecution have to make out the affirmative, and to satisfy you, as regards this part of



the case, that the defendant is Arthur Orton—to say that there was not a serious doubt hanging over the question of identity; but we have to assist us in the inquiry the facts of the case, and these may be sufficient to turn the scale. Let us go through them carefully.

In the first place, we know that in 1848, being then fourteen years of age, Arthur Orton went away in the brig ‘Ocean,’ for Valparaiso, and we know that he arrived there in the summer of 1848, and remained on board the ship, the vessel making voyages in those seas, until June, 1849, when we know he deserted from the ship. We know also, if the evidence of Dona Hayley can be relied on, that not long afterwards he made his appearance at Melipilla. Now, we have it as a positive certainty, as a fact beyond all controversy, that the defendant was at Melipilla. He tells us so himself, and that it was owing to his residence at that place, and his intimacy there with the person named Thomas Castro, that he was led, when he wanted to take a feigned name, to assume the name of Thomas Castro. You have, therefore, the fact beyond all doubt, that the defendant was at Melipilla. And the evidence entitles one to say that it is an equally undoubted fact that Arthur Orton was at Melipilla. Was Roger Tichborne there? Because if the defendant was there, and Arthur Orton was there, and Roger Tichborne was not there, then, although it would not follow that the defendant is Arthur Orton, we are advancing a long way towards that conclusion. I have already mooted this subject when following the track of Roger Tichborne in South America, and I called your attention to Roger’s letters as showing one thing as quite certain, and another thing as probable. We have it as a certainty, that throughout the whole of his residence in South America, however minute the details he goes into of his wanderings, there is no mention of Melipilla. In the second place I pointed out that according to what would be the proper construction, taking the words in their ordinary sense, of his account of his return from his visit to Santiago, which was the only occasion on which it was physically possible that he could have visited Melipilla, he could not have stayed, and did not stay, at that place. You remember that he tells his mother in the account he gives, that he left Santiago in haste, in order to be in time for the sailing of the ‘Pauline,’ and that when he “arrived there” he found that the vessel was delayed and would not sail for a considerable time. I asked you then to consider what was the true interpretation and sense of these words; whether they can mean anything other than that, when he arrived at the place where the ship was, he then found that she would not sail as soon as he expected, and not as implying on the contrary that he had stopped and learnt this at any intermediate place. It stands, therefore, thus: that in the correspondence of Roger himself there is not only no mention of Melipilla, but there is an account given by

him from which we should infer that he never stopped at Melipilla at all; and the statement that Roger Tichborne was ever at Melipilla consequently rests entirely on the assertion, the unsupported assertion, of the defendant. If, under these circumstances, we find that the account originally given by the defendant is wholly inconsistent with probability and the undoubted facts, the question is, whether you can attach any weight whatever to the statement that he so makes? Now I showed you on a former occasion that Roger, if he went to Melipilla at all, could only have gone there on his return journey from Santiago to Valparaiso. When he first landed at Valparaiso his intention was to go on towards Peru, by the same vessel, the 'Pauline,' in which he had come out. He found that the 'Pauline,' would not be ready to sail for some time, and he determined to make an excursion to Santiago. He went to Santiago; he stayed there three or four days and then left to return to Valparaiso, expecting to find the vessel ready to start. She did not start, as we know, until some time afterwards. He then went in the vessel northwards to Arica, and from there to Peru, and afterwards to Guayaquil, and up the Guayaquil river. He came back to Lima, and from Lima by steam to Valparaiso; and after staying a few days, and only a few days, at Valparaiso, he went to Santiago, from which place he started to cross the Andes on his way to Buenos Ayres. Now we know he took two days only to do the first journey to Santiago, and, therefore, could not have stayed at Melipilla on his way; and we know that on his second journey from Valparaiso to Santiago he travelled on horseback in an incredibly short space of time. He could not on that occasion have stopped at Melipilla. It follows, as a necessary consequence that, if he stopped at Melipilla at all, it must have been on his return journey from Santiago to Valparaiso on his first visit to Santiago. Such, however, was not the account the defendant gave of it, as I am about to explain to you. When the defendant was first examined on this subject he was wholly unaware of two journeys to Santiago; he thought there had been but one—at least so far as one can judge of a man's thoughts by that which he states—namely, on the occasion of Roger going from Valparaiso to Santiago for the purpose of leaving Chili and crossing the Andes. That clearly results from the first examination of the defendant which I will now read to you, which is very short, very clear, and very precise. It is plain from it that he knew of but one journey from Valparaiso to Santiago, and on that journey, and not on any return journey from Santiago to Valparaiso, he then placed the visit to Melipilla.

It is necessary to follow the cross-examination carefully. He is asked by Mr. Chapman Barber, "How long did you stay at Valparaiso?—The first time? Q. Yes?—About five weeks. Q. Where

did you go from Valparaiso?—I went to Callao. Q. Did you go to Lima?—Yes. Q. From Callao to Lima?—Yes. Q. Where did you go from there?—I went into the interior, shooting. Q. Where did you go from thence?—Back to Valparaiso.” So that we have his proceedings between his first leaving Valparaiso and his return to it, without any mention of a journey to Santiago. Having said he came back to Valparaiso, he is asked where he went from thence? He answers—“To Cassa Blanca. Q. Where is that?—A short distance from Valparaiso. Q. Is it on the coast or inland?—Inland. Q. From there?” Now observe the answer: “I suppose you do not want me to give you the name of every small town I went to.” “No,” says Mr. Chapman Barber, “Not every small place?—Well, I went from there to Santiago. Q. And from Santiago?—To Mendoza”—That is the first town you reach after you cross the Andes, and come to the plain below—“Q. Where is that?—It is on the reverse side of the Cordilleras. Q. And from there where did you go?—To Santa Fe, and from there to Buenos Ayres. Q. And from there?—To Monte Video. Q. From thence?—To Rio.” So that he traces his route first northwards to Peru, and then back to Valparaiso; thence he proceeds to Santiago, and thence, finally quitting Chili, over the Andes to Mendoza, to Buenos Ayres, Monte Video, and Rio; and so it stood, and there it would have rested, but for the defendant being asked in the course of the cross-examination whether he had assumed any name in Australia, to which he answered “yes, he had taken the name of Castro.” Mr. Serjeant Ballantine thought it necessary or expedient, by way of making that part of the case clear, to account for his having taken the name of Castro, and accordingly he asks him, in re-examination, these questions: “You stated that when you got to Australia, you changed your name to Castro?—Yes. Q. Had you known any person of that name?—I had. Q. Had you been intimate with him?—Very. Q. What was his Christian name?—Thomas. Q. Where had you met with him?—In Melipilla. Q. Where is that?—It is about twenty-three leagues from Valparaiso; about fifty or sixty miles from Valparaiso. Q. Had you seen much of him?—Yes, I was his guest for a while. Q. Where was that at?—At Melipilla. Q. At the place you have already mentioned?—Yes. Q. Is that in Chili?—In Chili. Q. You say you had been his guest?—Yes. Q. Do you mean by that you have stayed in his house?—That is to say there are no hotels in Melipilla, and he was very kind in inviting me to stay with him. Q. For how long did you to stay with him?—I think somewhere about three weeks.” So the examination stood; but when the Examiner came to read over the deposition with a view to the defendant accepting and signing it, he came to these words: “From there I went to Santiago, and from thence to



Mendoza." The defendant then interposes and says: "I beg your pardon, but I wish you to take notice that the counsel said he did not require me to give the names of all the towns I went through, and therefore I omitted Melipilla"—A curious observation that, upon which the Examiner says: "Yes, Mr. Barber, you did tell him that." Then the witness said: "Therefore I omitted to mention Melipilla, where I went on my journey to Santiago." Now it is to be observed, that Mr. Barber did not ask him anything specific beyond this: "Where did you go to next?"—that is, after starting from Valparaiso, and leaving Cassa Blanca—"Where did you go to next?" The answer would have been "Melipilla," if the defendant had not avoided Melipilla by, to use a sporting or riding phrase, shying at it. He turned round and said: "I suppose you do not want me to give you the name of every small town I went to?—No, not every small town;" and so Melipilla was omitted. But when the Examiner comes to read over what had been said, the witness interposes and makes, spontaneously, the singular observation that his omission of Melipilla had been owing to the counsel telling him he need not mention every small place; whereas the acquiescence of Mr. Barber in that course of the proceeding was the result of the suggestion of the witness, and had not proceeded from himself. Well, then, says the Examiner: "By the consent of both parties I can insert that here." Then Mr. Barber says: "You had better put it in at the end." Mr. Hannen, who was one of the counsel for the defendant, says: "Or on the margin." Mr. Barber says: "I do not think that would be regular." Mr. Hannen: "Yes, I have known it done, and quite recently." Then Mr. Chapman Barber asks: "Where does Melipilla come?—It lies off Cassa Blanca." Then the Examiner repeats: "Where did you go from Melipilla?—I went from Cassa Blanca to Santiago, by way of Melipilla; that will denote the two roads—the one a straight road, and the other not." The Examiner, accordingly, inserts the statement in the place where it would have occurred if the defendant, instead of shying when he came to Melipilla, had gone on and said: "From Cassa Blanca I went to Melipilla." The Examiner so inserts it in his note of the examination, and it stands thus: "I stayed about five weeks at Valparaiso the first time that I was there. I went from thence to Callao. I went from Callao to Lima; from Lima I went into the interior, shooting. I then went back to Valparaiso, and from thence to Cassa Blanca, a short distance inland from Valparaiso. From Valparaiso I went to Santiago viâ Melipilla, and from thence to Mendoza, which is on the reverse side of the Cordilleras; from thence I went to Santa Fé, and from thence to Buenos Ayres; from thence I went to Monte Video, and from thence to Rio." So that it becomes perfectly plain that there is but

one journey from Valparaiso to Santiago mentioned, and that it was upon that journey from Valparaiso to Santiago that he went viâ Melipilla to Santiago; whereas we know that Roger went twice from Valparaiso to Santiago, and that it was only upon the return from Santiago to Valparaiso that he could by any physical possibility have stayed at Melipilla at all. Now, at this time the defendant had no means of knowing this, except he had more carefully studied the letter of Roger to his mother, in which he speaks of going back from Santiago to Valparaiso. But Moore was present at the examination, and Moore was the servant who had accompanied Roger on his way from Valparaiso to Santiago on the first visit, and who knew that Roger could not upon that journey have stopped at Melipilla, and who also knew that upon the second journey Roger could not have stopped at Melipilla, because he knew that when Roger came to Santiago the second time for the purpose of going on to Buenos Ayres, he had ridden the journey, and knew what time he had been about it. Whether Moore gave him any information on the subject I know not—he has not been called on this trial for the defence—but when the defendant was afterwards examined on the trial, he put the thing as it would have happened if Roger had really gone to Melipilla; that is to say, he put it on his journey from Santiago to Valparaiso on his return from the excursion to Santiago in consequence of the ‘Pauline’ not being ready to start. Of course, that is a very striking discrepancy. He was asked, “Did you remain at Valparaiso or go elsewhere?—I went up to Santiago. Q. How did you get there?—We went up in a *velocho*.” Then he describes what a *velocho* is, namely, one of the open cars used in that country; and he is then asked, “To what place did you go when you started from Santiago alone without Moore?—I came the other road back. Q. Tell us what you mean by the other road back; was that back to Valparaiso?—Yes, back to Valparaiso; and the road is called the San Francisco and Melipilla Road, I believe. Q. Is that longer or shorter, or the same distance, as the road by which you had come?—It is a longer road, but not so hilly. Q. You were at Santiago again, or was that the only occasion you were at Santiago? —I was there again some time after that.” So that here he speaks of the second journey, while on the first examination he had spoken only of one. “Q. What became of the carriages and horses while you were at Melipilla?—They went on, I think, to Valparaiso. Q. Do you remember what became of them the first night, the night you arrived?—Yes, they were put in the yard at the back of Castro’s place. Q. Had you intended to stay at Melipilla at all?—No, no more than a few days.” Now, observe, Roger had said in his letter that he could not stay for Moore, who was ill at Santiago, because he wanted to get to Valparaiso in time for the ‘Pauline.’ Here, the

defendant says he had intended to stay at Melipilla a few days. "How long did you, in fact stay?—You mean in the neighbourhood?

*Q.* Yes, about the neighbourhood, I mean, without going back to Valparaiso?—I think it was over a fortnight; I cannot say exactly how long. *Q.* How came you to do that?—Because the ship did

not sail as soon as she was expected. **LORD CHIEF JUSTICE BOVILL:** You stayed because——?—The ship did not sail as she was expected. **MR. GIFFARD:** How did you know that?—Because

I got an answer back. *Q.* An answer to what?—To a letter that I had written. *Q.* You had written a letter then; to whom had

you written a letter?—I sent my luggage on in the *velocho* to Valparaiso. *Q.* You had written a letter to whom?—I had written

a letter to the captain of the ship to let me know when he was going to sail. **A JUROR:** The 'Pauline'?—Yes, the 'Pauline.'

**MR. GIFFARD:** About what is the distance between Melipilla and Valparaiso?—Well, I could not tell you exactly, I should think

about thirty-four or thirty-five miles, it is only my own judgment, I may be wrong. *Q.* You say you got a letter back from the

captain of the 'Pauline,' what did the captain tell you about the 'Pauline'?—She was not going to sail for some time. *Q.* Do you

remember any circumstance that induced you to remain at Melipilla, or the neighbourhood, hearing that the ship was not going to sail for

some time?—No, I remained there, shooting, at different places. *Q.* With whom?—With different people."

He represents himself as having been introduced to these persons by Castro, whom he describes as being in a very good position, and keeping a large store. He says he knew a Don Alcalde, to whose place at San Diego he went shooting, seventeen or eighteen miles from Melipilla. He went also to a Senor Toro's, whose place was some twenty miles from Melipilla; and to several other places in the neighbourhood.

The discrepancy between this statement and the statement before Mr. Roupell was, of course, put strongly in cross-examination. Then the defendant boldly asserts that it was the fault of the shorthand writer, who had inserted the statement that he had taken Melipilla in his way to Santiago, and he says he ought to have said, "I went by way of Cassa Blanca, and came back *viâ* Melipilla."

But the answer to that appears conclusive; the shorthand writer and the Examiner agree. The Examiner does not write shorthand; and the Examiner inserted the statement as to the visit to Melipilla, in the right place, as the defendant had stated it, not as having occurred on his way back from Santiago to Valparaiso, but on his way from Valparaiso to Santiago, and the shorthand writer has it exactly the same. So that as it stands it is clear that on his first examination he represented that it was on the single journey from Valparaiso to Santiago, and not on his journey from Santiago on the way back to



Valparaiso that the visit to Melipilla occurred. This being pressed upon him, he asserts that there is a mistake, that the word should have been "from" and not "to,"—that they ought to have put, "on the way from." Of course it is open to you to accept those explanations, but the concurrence of the shorthand notes with those of the Examiner certainly leads fairly to the conclusion that they have both got what he said. If this be so, his statement, as I have already pointed out, is utterly inconsistent with the fact that Roger could not by any possibility have stopped at Melipilla on the occasion of the journey to Santiago; while it further appears that he had a knowledge of one journey only to Santiago, when in point of fact there were two.

Again, when you find that Roger, if he had gone to Melipilla at all, could have stayed there only from two to three weeks, we have to ask ourselves whether it is consistent with possibility that he should have made, as you afterwards find from the defendant's letters he had made, the acquaintance of some twelve or thirteen people, with whom he was on habits of familiar intimacy, and have gone about the country shooting? Must not the distrust, which the very serious mistake I have been calling attention to would naturally engender, be hereby materially increased? Is it possible that all this could have happened in the short time which alone can be ascribed to Roger's stay at Melipilla. His stay cannot have extended beyond two or three weeks, because we know that Roger left Santiago on the 6th of July, and we know that the 'Pauline' sailed for Arica with Roger on board on the 27th, and then there is the time necessarily occupied in the journey between the two places. We know that Roger could only have spent two or three weeks at Melipilla, if he ever was there at all, and the defendant accordingly puts his stay at two or three weeks. How is it possible that all these places could be visited, and all these intimate acquaintances and friendships be formed up in the course of that very short period? That is another difficulty with which we have to deal.

What if you are satisfied that Roger Tichborne never was at Melipilla? We then eliminate Roger from the discussion altogether? Then comes the next question, Was Arthur Orton there? The defendant undoubtedly was. If Arthur Orton was, we have then the defendant and Arthur Orton brought into close contact and juxtaposition, and we have to ask ourselves whether they are one and the same or two different persons. That Arthur Orton was there, there cannot be a doubt. He deserted from his ship at Valparaiso in the month of June, 1849; he re-embarked on board the 'Jessie Miller' at that place in February, 1851, which gives us one year and seven months. What became of him in the meanwhile? A man of the name of Cotton was brought before you who said he fell in with

him at a place somewhere in California, called Santiago; a strange coincidence, that one man represented to be Arthur Orton should be at Santiago in Chili, and the other at Santiago in California, a distance which we calculated, I think, as some 4,000 miles to the north, where the witness says he met him herding cattle. Unless we suppose Arthur Orton to have got all the way to California, and then to have found his way back to Valparaiso, this man must either be telling you what is untrue, or else he must be mistaking some other Orton for the Arthur Orton we are talking of; and it is a curious fact that more than one brother of that family should have entirely disappeared. There was one of the name of Robert whose history has never been followed up, which I think is a matter to be regretted, who went away at the age of sixteen or seventeen, and was never heard of afterwards. Whether Cotton could have mistaken one for the other I do not know; but it is a curious thing. We find Arthur Orton deserting from the ship at Valparaiso in June, 1849; we find him re-shipping there in another vessel in February, 1851; we shall find him certainly during a part of the time at Melipilla, and then to be told that he was also herding cattle 4,000 miles to the north, in an out-of-the-way place, and that by a man who says that, although he had known him when at home, he never asked him how he came there, why he was there, or under what circumstances he got there, and who says he afterwards saw him in London and wished him "good day," and never thought of asking him how he came back, is somewhat extraordinary.

Now let us see what says the principal witness in this matter, Dona de Hayley. She is the wife of an English medical man who had settled at Melipilla, and she tells us that there came to their house, sent by one of the Melipilla people, because English was spoken there, an English sailor lad about seventeen years of age, dressed as sailors are, and who told a pitiful story of having had to run away from his ship because he had been used cruelly by the captain. She says he was treated kindly by the inhabitants, and in the first instance was taken into her husband's house. There he told her certain things which it is important to refer to. He told her that his name was Arthur Orton; that he was the son of the man who was the Queen's butcher in London. He talked of his family; he talked of his sisters. What she says on this subject is deserving of attention. "Did he speak to you about his sisters?—He did. *Q.* What did he tell you about his sisters? First of all, did he tell you their names?—He spoke often regarding his sisters, and I particularly remember the name of Anna being mentioned. *Q.* Did he tell you he had one, or more than one sister named Anna?—I remember the names of Maria Anna, Margarita Anna, and Matilda Anna. I do not remember exactly. *Q.* Will you first tell me what he said were his sisters' names, as far as you can remember, Maria Anna, Margarita Anna,

Matilda?—I do not know exactly. I believe there were three sisters named. Q. Was the name of Isabel mentioned?—I believe it was." Now, I understand, and if there is any Spanish scholar in court, I should be glad to hear how that is, that they have no Elizabeth in Spanish, and that Isabel is the equivalent for it.

Master COCKBURN : Mr. Moriarty is in court.

Mr. MORIARTY : That is so, my Lord. Isabel is the Spanish for Elizabeth, and for the French Elisabeth also.

The LORD CHIEF JUSTICE ; That is very striking, because we know what the names of the sisters were. There were four—Mary Ann, Margaret Ann, Matilda, and Elizabeth ; she adds the Ann to the Matilda, which may probably be what she understood ; but, subject to this slight mistake, her knowledge of the names is very remarkable, and shows plainly that Arthur Orton must have been there. For how otherwise should she have known these names? We cannot suppose that she had been instructed, when she came to give evidence, that Arthur Orton had four sisters, two living that had Ann tacked on to the first name, Mary Ann and Margaret Ann, and that the other, who was dead, was Matilda, and the fourth sister Elizabeth, which she translates, Isabel. She says he stayed there from a year to a year and a half, which corresponds with the time which passed between the desertion of Arthur Orton from his ship, and his shipping again on board the ship 'Jessie Miller.' Then there is another thing to which she speaks, which is important, not only as fixing the identity of Arthur Orton, but with a view to an ulterior purpose ; she speaks of a mark she saw on his arm. She is asked what sort of mark it was, and she says—"If I remember right, it was his initials." She says—"I said to him, 'what do you say about this mark, what is it?'" Then she is asked to draw it on paper, and she draws it on paper, and says : "There were two letters inside it. I said 'What does this mean?' he said, 'Arthur Orton.'" Then there was some question as to which arm it was on. She first held up the left arm, and then pointed to the right ; but it ended by her saying that, although she remembered seeing this mark, she could not tell on which arm it was. "I should say," she says, "it was on the thick part of the arm." She is pressed on cross-examination as to whether she is quite sure it was on that part of the arm, and she says she is not quite certain ; and then she, with a natural movement, turns to the defendant, and says, "He ought to know better than I do." She is asked whether she had ever seen such a mark before, and she says "Never." When asked the colour, she says it was blue. So that to the best of her recollection and belief, she did see a mark on the arm of Arthur Orton, corresponding in size to what would contain two letters ; she saw two



letters there, and asked Orton what those two letters signified, and he said his initials, " A. O."

Dona Hayley speaks to another fact, and that is that Arthur Orton was in the habit, when he became intimate with the Castros, of calling Castro's wife Mrs. Castro; and you will find, when we come to the defendant's letters to Castro, that he refers to that fact, and speaks of the wife as the person whom he had been in the habit of calling Mrs. Castro, and trying to make them call Mrs. Castro. Then the witness further speaks of the fact of Dona Ahumada having cut a lock of hair from off Arthur Orton's head, and having shown it to her; and you will find there is more than one admission on the part of the defendant, although those admissions were afterwards withdrawn, that Dona Ahumada did cut a lock of hair from his head. Lastly, she describes the life which the defendant led; how the inhabitants took a liking to him; how they lent him their horses—horses being abundant in that country, every one having a horse or two—and how they used to lend him their guns, and let him go shooting; and that he went round the country to one house or the other of the people whose acquaintance he had made, and who were acquainted with these good folks of Melipilla. Those are the statements of Dona Hayley. I think we cannot doubt that the substantial part of the story, at all events, is true, that Arthur Orton was there, and was there during a period of several months. The witness is open to this difficulty, certainly, that she lays the date at an impossible time; for she says she married in 1847, and that this residence of Arthur Orton was some five or six years after she was married, which cannot be; because Arthur Orton, we know, sailed in February, 1851, from Chili, and never went back; so that no doubt she is open to the observation that there is a serious discrepancy with regard to the date. Nevertheless, a person may be mistaken as to a date, and although sometimes the date is of the very essence of the inquiry, it is not so always; and if the other circumstances and facts lead you to the conclusion that the witness is right as to the main part of the narrative, time is not always of consequence, and, where it is not, you may still adopt the statement. And there is one other part of her statement by which, if you can rely on her, we may correct the error in her date. She says most positively there never was any other young Englishman who stayed in her husband's house except this Arthur Orton. She speaks of an old Englishman who was there, as a lodger, at one time, but says that there never was a young Englishman there, except this Arthur Orton. If that is the case, and you can rely upon her statement, then the time might have been fixed by her under an erroneous impression, and would not detract from the substantial accuracy of the rest of her narrative. She then goes on to say, touching the very essence of this inquiry, that the defendant is the Arthur Orton who first stayed in

her house at Melipilla, and who was afterwards resident at Melipilla for some time. But she may be dishonest, or may be mistaken. Is she dishonest? Do you see any reason to doubt the intended truthfulness of her statement? The learned counsel for the defendant makes the same observation upon her that he made upon the McAlisters. He says that she has received, or is to receive, 1,000 dollars for coming to this country, which we may take in round figures at 250*l*. It sounds a large sum to pay, but when you come from the other side of the Atlantic, and long journeys have to be made by sea and land, a witness who has no interest in the case may say, "I am not going to leave my house and friends and all my associations about a matter which does not concern me, unless you pay me handsomely for it." There is no means, as I observed with regard to Mrs. McAlister, of compelling witnesses to come from abroad. Witnesses abroad are beyond the jurisdiction of the court; you have no process by which you can compel them to come, and you are at their mercy. But there are here, as there were with regard to Mrs. McAlister, the means immediately at hand of checking her accuracy. She was examined under the commission, and her evidence has been returned; and, though it could not be made available for the purposes of the prosecution, it may, as I pointed out before, be made available for the purpose of controlling the evidence, and contradicting the witness if necessary. I do not see any reason, therefore, why the sum of money she received—even if you think it extravagant—is to be taken as detracting from the credibility of her evidence. But she is strongly supported by the fact to which she speaks, and to which I have called attention, of the defendant having a habit of calling Castro's wife Mrs. Castro, because that is admitted by him; and she is supported by the fact of the admission of the lock of hair having been cut by Dona Ahumada; she is supported by the description she gives of the life passed by Arthur Orton, which corresponds with the defendant's own representation of the life he passed there. All that is much calculated to support her. But she is supported by still stronger concurring evidence than that; she is supported by the Castro correspondence, to which I am about to call your attention. She may be mistaken as to the identity of the defendant. She comes here, after an interval of many years, during which time, in all probability, the name of Arthur Orton has never been present to her mind; she is suddenly asked to come to this country and see the defendant; she sees him and says, "Oh! that is Arthur Orton." Very likely she comes with a pre-conceived opinion and foregone conclusion on the subject. Her evidence, therefore, must be taken always with this qualification, that in a matter of identity she, like anybody else, may be mistaken. The question is, how far the facts bear her out, and lead you to the conclusion that she is correct? And there is one cir-

cumstance which, certainly, must not be lost sight of, and that is, that the defendant was called upon to face, not only her, but the rest of the Chili witnesses, and did not do it. Whether his explanation is satisfactory to you on that point is a matter for you to consider. If it is not, it is a strong thing to confirm the testimony of a witness who comes and speaks to the history of Arthur Orton and identifies the defendant with him, that the defendant might have presented himself, but did not, not only before her but before those other witnesses who have not been called, and who, if there had been a public prosecutor who had the control and direction of this case, in my opinion, most undoubtedly would have been called. The defendant had the opportunity of going and confronting these witnesses, and declined to avail himself of it.

And now let us turn to the correspondence, for it is calculated to throw much light on this subject, and may lead you to a conclusion about the case. It is a correspondence which took place between the defendant and his attorney, Mr. Holmes, and people at Melipilla; a correspondence carried on with them through a certain Pedro Castro. Pedro Castro is the son of Thomas Castro, the person whose name the defendant assumed. After the examination before Mr. Roupell, when the statement about the defendant having been at Melipilla, which he appears to have tried at first to avoid, but which his counsel, Serjeant Ballantine, I dare say not foreseeing the consequences, brought out, the attention of the defendants in the suit was of course directed to Melipilla, and they proceeded to make inquiries to ascertain whether the defendant had been at Melipilla as stated; and also whether Roger Tichborne had been there. Probably, the defendant anticipated that these inquiries would be made, or he may have become aware that they were in course of being made; and whether it was with a view of anticipating the movements of the opposite party, or whether it was to get from the people of Melipilla a recognition of the fact that he had formerly been in South America, I do not know—it may have been for both—he sat down and wrote a remarkable letter to Tomas Castro, the man whose name he had thus assumed in Australia. You have the letter before you in the printed form as re-translated from the Spanish. He wrote the original draft of the letter, and of course in English. That letter was translated into Spanish, and the Spanish letter was considered the original; and when that letter was used for the purpose of the late trial it was translated from the Spanish into English, but into very different English from that which the defendant himself wrote. But we have also the original draft letter, and I wish to call your attention to it as it was written.

It is dated the 28th August, 1867, from 25 Poultry, where Mr. Holmes's office was. "Dear Tomas Castro Dear Sir. I suppose



I am about the last person in the World. that you would expect to receive a letter from. But my dear Friend, you see we know not what we have to do in this world. The fact is I have only just returned to England That is to say last december. and I neglected to write to my Friends for several years. I have grown very stout nearly so stout as Ramond OSago. I found when I arrived in England my property was and is now for the present in possession of my relatives who dispute my titles I am very happy to say my mother is still alive. and I have also many Friends who likewise do all they can to help me But still all those beautiful estates that I used to tell you of. are kupt from me. until I prove that I am the same person I was thirteen years ago. Please remember me to Don Juan Halley the English Doctor and to Clara and Jesusa my respects to Donna Natalia Salmento. or as I used to teach you to call her Mrs. Castro. Please remember me also to Don Ramond Alcalde Donna Hurtano and my old Compadre as I used to call him Senorita Matilda and also to Jose Maria Berenguel and his brother, Would my dear Friend show this letter to them and ask them all to write a few lines to me"—What I suppose the defendant to have wanted these few lines for was, that as Roger had been in Chili, and he was anxious to show he was Roger, they might write to him as Roger and say he had been in Chili—"and also if not too much truble a few lines to my Solicitor Mr. John Holmes. 25 Poultry London. It is very hard for me my dear Friend to be kepp out of my estates. So I must therefore beg of you to help me all you can. really I was forgetting one old friend altogether I mean Mr. Toro Don Jose. your Wife sister husband. of Concumen. And a nother strange thing I have to tell you this. And I have no doubt you will say I took a great liberty on my self. That is to say I took and made use of your name and was only known in Australia by the name of Thomas Castro for the thirteen years that I was there I also said I belonged to Chili. They might have known better than that. I can assure you my dear Friend I did not disgrace your name either in fate of Horsemanship. while there. I hope my dear Friend. you will give my agent all the information you can when he calls and do not forget to send me a few lines by return mail. and if possible see Don Carlos Anselmo of Valparaiso. as soon as you can. He will explain to you. anythink you do not understand Hoping my dear Friend wife and Friends and self are quite well I remain truly yours R. C. D. Tichborne." Now there are twelve persons referred to in that letter, besides Castro himself, which makes thirteen, and all except one, namely Anselmo, were identified by Mr. Purcell, as inhabitants, either living or dead, of Melipilla, or its neighbourhood.

Gentlemen, that letter brought an answer, not from Tomas Castro,

the father, to whom the defendant had written, because he was at that time insane, and in a lunatic asylum, but from his son, and it is dated the 29th of October. "Dear Sir,—I acknowledge the receipt of your esteemed favour, dated the 28th of August of the current year, in default of my father, Don Tomas Castro, who, since you left Chili, unhappily lost his reason and is now in the *Caso de Orates* of Santiago. My mother, Dona Natalia Sarmiento de Castro (Mrs. Castro, as you called her) has not been living for the last 14 months or so; my godfather Don Ramon Azocar whom you name Osoga and Don Ramon Alcalde, all three died of a natural death. But Dona Maria Lagor widow of my said godfather remembers you. I showed your letter to Don Juan Hayley the English Doctor and to his wife Dona Clara Nories. The former retains no recollection of you; it is true that owing to intemperance his memory is gone; the latter does and is ready to declare so; Dona Jesusa Nories sister of Don Clara is dead. Don José Maria Berenguel"—that is the name the defendant gave him—"is not so called; his name is Don Francisco Berenguel; he is established in Santiago; and Don José Miguel Valdivieso to whom you give the title of brother to the latter is at the present time Regidor of the Municipality of Melipilla. Directly he read your letter he went into an account as to who you were, of your stay in his place &c. &c. expressing great pleasure at hearing from you. Your friend Don José Maria Toro, whom you call Mr. Toro,"—I have a reason for asking you to observe these Christian names—"is also established in Santiago. Don Pedro Pablo his brother still resides in Concu-men. Dona Francisca Ahumada the mother of the Azocares retains a lock of your hair. I recall this fact to your attention in case of your being able to turn it to any account. As I cannot go myself to Valparaiso owing to various circumstances, I have written to Don Carlos Anselmo telling him in default of my father that I was ready to furnish the data which you desire at my said father's hands. I must advise you that the other side, through the instrumentality of Don Cevero Bara, has been hunting up data respecting your stay in this town. He did not choose to give the names of the English firm in Valparaiso who had instructed him. I enclose you a copy of my portrait. I hope you will send me yours as a souvenir to the personal friends you have left over here. Believe me my dear Sir your obedient Servant Pedro a Castro."

Having received that letter, the claimant answered it on the 1st of January, 1868. We have this and the following letters, only as translated from the Spanish, which accounts for the absence of the characteristic peculiarities of the defendant's writing. "My esteemed Don Pedro. On the 18th of last month I received your esteemed letter of the 29th of October last and regret exceedingly to hear of

the unhappy malady of your father, and of the death of your poor mother. I did not remember you when I wrote the letter to your father, but now I remember you very well, as well as your brother Don Tomas and your sister Dona Natalia. I will write you a long letter by next steamer and will have a photographic portrait taken of me to send to you. My friend I wish you to beg Dona Francisca Ahumada to send me a small portion of the lock of my hair which she has kept—not to send it all, but only a small portion. Be good enough to remember me to all my friends. I am extremely engaged with the matters of my suit, but I am sure to triumph. I remain your affectionate friend, R. C. D. Tichborne.” To this Don Pedro Castro answers on the 27th of February: “Esteemed Sir, I have in my possession your favour of the 1st of January of the current year which you have been good enough to write to me in reply to mine of the 29th of October last year. An agent has come over to Melipilla on behalf of your opponent. His name is Cevero Barra. His first step was to seek out your certificate of baptism, because some one told him you had been baptized here by the Presbyter Don Fernando Barrales. He could not however find it, but I know he had interviews with that gentleman, with Dona Clara Nories de Hayley, and Dona Francisca Ahumada. He afterwards called on me in order that I should know him and give him copies of the letters you had written to me, telling me that he had instructions to place at my disposal a money remittance and offer me a berth at Valparaiso. He did not attain his object. On the occasion of another journey which he made to Melipilla, I had already received the first letter from you intended for my father, and believing him your agent I shewed him the said letter. Barra endeavoured to make out that you were an impostor, that Mr. Arthur Horton, who was staying here, was the son of a London butcher, whose father had sent him to sea, in order that he might by means of sea voyages cure himself of a disease in the head called sambits; that in the year 1853 he returned to England, whence he came back to America; that Sir Roger C. D. Tichborne finding himself in the year 1852 in a certain part of England in command of his regiment, threw it up and likewise came over to America; that after travelling about he embarked at Rio de Janeiro on his return to England on board a vessel that was wrecked before reaching her destination; that on board this vessel there happened to be Mr. Arthur, likewise shipped as a passenger, that he made his acquaintance and got possession of his papers, and that Mr. Arthur then went to Australia to await there the death of Sir Roger C. D. Tichborne’s father in order to present himself in England and claim the inheritance. Bring all this to the knowledge of your worthy defender. This story of your being the son of a butcher (*carniciero*) in London springs from the fact



probably of your wishing to say that your father was chancellor (*canciller*) of the Queen, and that being ignorant of Spanish, you having scarcely then begun to speak it, having recently arrived here, you said he was a butcher (*carnicier*). I shall be very pleased to possess your portrait. I send you a quarter of the lock of hair which the Senora Ahumada has of yours. Saluting you kindly, I beg to subscribe myself your devoted servant, PEDRO A. CASTRO." Then there is a corresponding letter from Castro to Holmes of the same date in almost the same words, but which ends in these words, "I am greatly delighted at the approaching triumph of Sir Roger D. C. Tichborne, which you will kindly announce to me. As regards all else, I am Dear Sir, yours truly, PEDRO A. CASTRO."

Now these letters from Pedro Castro undoubtedly show his friendly disposition; manifestly they are the letters of a friend who is greatly pleased at the approaching success of his correspondent. On the receipt of that letter, the defendant writes to Don Pedro Castro as follows:—"Alresford, Hampshire, 29th April, 1868. My dear friend, I received your affectionate letter dated the 29th of February. I was not surprised to learn that the agents of the other side had called upon you, inasmuch as they are capable of anything base or underhand; in Australia also they have had agents endeavouring to do the same. I have received the hair, all safe; a thousand thanks. Give also my sincere thanks and respects to the Senora de Ahumada, and tell her she has done me a great service by preserving this lock of hair. I regret exceedingly to have to inform you that since I wrote you last I have suffered the loss of my dear mother, and that if it had not been for the friends I knew before leaving England, I should have found myself without any money. I am ready for my cause to be brought forward and decided by a jury of my countrymen; but the other side are already asking for more time, in the hope that I should die. I have affidavits from more than one hundred persons, who declare upon oath that I am the same person they knew before I left England. Among them are seven of my brother officers—two colonels, two Majors, and three captains and more than 20 petty officers—all the Tichborne tenants, and a good many of the gentry of the country round. I trust my dear friend, that you will not allow the falsehoods of Don Cervero Barra to have any effect upon you; the truth must, and in the end will, come out. When I was at Melipilla, I wrote a letter to Dona Toro, the wife of José Maria Toro"—the letter has never made its appearance as far as I am aware of—"to enquire for particulars (*senas*) of the house of Don Bensenta Lopez; if you could obtain that letter and send it to me, you would do me a great service; it was written in French. The lady to whom I refer is the same who gave me letters of introduction for Buenos Ayres. With kind

remembrances to all my old friends, I remain yours affectionately R. C. D. Tichborne." Mr. Holmes writes by the same mail on May the 1st, "Dear Sir, I am exceedingly obliged to you for your letter of the 29th February last, which reached me in due course, as also by the same mail one for Sir Roger Tichborne. Sir Roger is writing to you by this post, and sending you his photographic portrait which was taken at Paris last year, very shortly after his return. The lock of hair which you were good enough to enclose to Sir Roger is of considerable importance, because it is identically the same as his hair at this moment." Now was that true or not? If it was true, we have the lock of hair here. I shall have to show it to you again for another purpose in a minute: it is very much lighter than the defendant's hair at present; therefore, if Mr. Holmes compared it with the defendant's hair at the time he received it, and found it was of the same identical colour as the defendant's hair, the latter must by some contrivance or other have been made to take a deeper colour since. It would not be, I think, fair to assume that against him, as Mr. Holmes may have made that assertion unscrupulously, for the purpose of inducing the persons out there to be satisfied of the identity of the defendant with the Englishman who had been with them, so that they might write to him as such; or in the event of a commission going out to take evidence, or anything of the sort, that these persons might be predisposed to believe in the identity of the defendant with the man they had known, and who, so far as Mr. Holmes was then aware, had been known to them as Roger Tichborne. Mr. Holmes continues—"You mention that Don Cervero Barra, the agent of the adverse party, has endeavoured to produce the impression that Sir Roger was the same person as Mr. Arthur Orton." Now what follows is most important, as leading to an answer upon which on this point it may be said that everything turns—"I cannot completely and clearly make out from your letter, whether you yourself or any of your family or friends personally knew Arthur Orton. Be good enough to inform me particularly by your next letter whether you or they really did know Arthur Orton or not, or whether in point of fact his name was not first mentioned to you and your friends by Don Cervero Barra. It is really important that you should inform me precisely upon this point." Mr. Holmes up to this time had not seen the Orton sisters, so as to learn from them, as he did afterwards, the fact of Arthur Orton having been in Chili. He did not then know that. Pedro Castro having written word that Don Cervero Barra was making inquiries, and that he asserted that the Englishman who had been out there, and who was now claiming to be an English Baronet, was no other than Arthur Orton, the son of old George Orton, the butcher, of High Street, Wapping, Mr. Holmes naturally says to himself:

"What can this mean? Was there an Arthur Orton out there?" He, therefore, says to Castro, "I cannot completely and clearly make out from your letter, whether you yourself or any of your family or friends personally knew Arthur Orton. Be good enough to inform me particularly by your next letter whether you or they really did know Arthur Orton, or whether, in point of fact, his name was not first mentioned to you and your friends by Don Cervero Barra. It is really important that you should inform me precisely upon this point"—most undoubtedly it was.—"The opposing party here have been making inquiries with respect to a person named Arthur Orton, son of a butcher, who knew Sir Roger in Australia, and I have evidence on the part of Orton's sisters that Sir Roger is in no way connected with them, and had never seen him till very recently"—That was all they told him at first; afterwards they let out that Arthur had been to Chili—"I have also the clearest evidence that Arthur Orton and Sir Roger are two distinct persons, and that they were known together in the same town, and that Orton is at this moment in the western part of Australia. I have sent for him to come over to England. The endeavour on the part of Sir Roger's opponents to confound him with Arthur Orton is simply a bit of chicanery, for they do not fight honourably in any of their proceedings. Unhappily, Sir Roger's mother, the Dowager Lady Tichborne, died suddenly on the 12th of March last, and in consequence he is deprived of all resources until he obtains possession of his estate; this is only a question of time. He has, however, at his back, a large number of good and influential friends, who sympathise with him in the wicked opposition he has met with, and who will not allow him to go to the wall. I send you by book post printed copies of some of the affidavits"—This is the systematic course pursued by Mr. Holmes—"I send you by book post printed copies of some of the affidavits I have filed on behalf of Sir Roger to prove his identity. These and others, to the number of 100 witnesses, are irresistible, and in the end the justness of his rights must triumph. Renewing my thanks for the trouble and attentive consideration you have bestowed upon this matter, I am yours, etc., John Holmes." Now comes the answer to Mr. Holmes's inquiry, and to that answer I have to invite your most careful attention. If Arthur Orton had been known there as one man, and Roger Tichborne had been known as another, when the defendant wrote and said, "I am the Englishman whom you remember at Melipilla formerly," and Mr. Holmes wrote and said, "You tell us they are making inquiries about Arthur Orton, and saying my client is Arthur Orton the son of Mr. George Orton the butcher of Wapping, tell me if you ever knew an Arthur Orton at Melipilla," what would have been the answer that you would have expected to be given if the two had been distinct and separate persons? The answer would



have been: "You ask whether we knew an Arthur Orton out here, certainly we did; there was an Arthur Orton here; but Arthur Orton was one person, and your client, whom we knew as Roger Tichborne, was another; there can be no confounding of the two persons, because they are two distinct and separate persons, and went by distinct and separate names. It is true, there was an Arthur Orton out here, but quite a different man from your client, and the two must not be confounded." That would have been the natural answer which would have been made under such circumstances. Let us see what is the answer to Mr. Holmes's inquiry. It is of the 15th of July: "By what I write to Sir Roger C. D. Tichborne under this same date, you will perceive that through my absence I received your esteemed favour of the first of May last, after some delay. In reply to that letter I have to inform you that Don Cevero Barra is the person who has endeavoured to show that Sir Roger was an impostor; that he had assumed that name in the place of his true Christian and surname of Arthur Orton—having borrowed the same in order to usurp the inheritance—and that he is the son of a butcher, and not of a nobleman belonging to the English aristocracy. No one has known here that very Arthur Orton; and although Sir Roger bore that Christian and surname, he himself communicated to Don José Miguel Valdivieso and to other persons that they were not his own, that he belonged to the English aristocracy, and that in England he had played with the Queen's children."—"Although Sir Roger bore that Christian and surname"—in other words, bore out here the name of Arthur Orton, no one has known an Arthur Orton who was the son of the butcher at Wapping. Don Pedro Castro cannot have gone very far, because if he had inquired of Dona de Hayley she would have told him that was the description Arthur Orton gave her of himself. What he says in effect is this: "No one has known here an Arthur Orton who was the son of a butcher at Wapping, but they have known a person who went by that name, though he told them that those were not his names, that he belonged to the English aristocracy, and that in England he had played with the Queen's children." We have therefore here a distinct recognition on the part of Pedro Castro, after having made inquiries of Don Valdivieso and the other people there, that Mr. Holmes's client bore the Christian and surname of Arthur Orton. Nor, though the man appears to have said that these were not his real names, does he, while vapouringly boasting that he belonged to the aristocracy, and had played with the Queen's children, appear to have mentioned the name of Tichborne, or any other name. If, indeed, he had gone on to say, "My true name is Roger Tichborne," it would have been a very different thing; but the name of Tichborne is evidently

unknown to the Chili people; and the legitimate conclusion to be drawn from the language of Pedro Castro is that which is in accordance with the statement of Dona de Hayley, namely, that the only young Englishman who ever stayed at Melipilla—a rural district, where the residence of a young Englishman would be known to the inhabitants—was this one single individual; and that while he bore, as the letter clearly recognizes, the name of Arthur Orton, the name of Roger Tichborne was unknown. Then, can we suppose that Roger, while in Chili, ever assumed the Christian and surnames of Arthur Orton? No conceivable motive can be assigned for his doing so; and as we know from the defendant's witnesses, Mr. Bingley and Mrs. Helsby, that when at Santiago, Roger Tichborne went by his own name, it is difficult to suppose that he should have assumed the name of Arthur Orton at Melipilla. Indeed, there is nothing to show us that Roger had ever heard of the name of Orton. But unless Roger purposely assumed the Christian and surname of Orton, how can we reconcile the statement, made in answer to Mr. Holmes's specific inquiry on the subject, that the Englishman out there was known as Arthur Orton, with the supposition that this was Roger Tichborne?

The result, then, so far as we have yet gone, is this: there was, if you believe Dona de Hayley, but one Englishman there. Pedro Castro makes no reference to a second. Judging from the language of Roger's letters, adding to it the fact that the only Englishman out there was, not only according to Dona de Hayley, but also according to Pedro Castro's letters, one who was there as Arthur Orton, can we avoid coming to the conclusion that Roger never was there? The defendant undoubtedly was. It is not conclusive to show that the defendant is Arthur Orton, but then, as I have more than once said, it takes us a long way indeed towards that conclusion; and then when you come to other circumstances, the question is whether the conclusion thus partially arrived at does not become conviction.

In the first place we see that his acquaintance with the people of Melipilla had advanced to a degree of intimacy, sufficient to impress upon his memory the names of no less than thirteen, fourteen, or fifteen people—when we include all the names that come up in the course of the correspondence—and that he had been visiting at their houses. And then comes the very material fact, that Roger, if there at all, could only have been there a period of from two to three weeks. Would the period of from two to three weeks suffice for making all those acquaintances, and attaining that degree of intimacy with the people in question? You have here the alternative between Roger Tichborne on the one hand, who was there that short time, and Arthur Orton, who was there for a period of a year or a year and a half.

Next comes the material question of the lock of hair. Did Dona Ahumada cut off a lock of hair from the head of the defendant? If she did, and the hair sent home is that hair, the case is at an end. Here is the hair. I invite your attention to it. If this hair was cut from the head of the defendant, and the defendant is Roger Tichborne, it could not have been cut off earlier than the year 1853. For, Roger was not at Melipilla until 1853. But here, in this other piece of hair, we have the hair of the undoubted Roger, cut off from his head by his mother in 1852. It is the undoubted hair of Roger Charles Tichborne, cut off by his mother, and endorsed by her own hand, "Roger's hair, 1852." It was found among her own papers. There is no doubt about that. Now, the hair sent from Chili, which is light, might, in the progress of time, become the colour of Roger's, which is dark, but the hair of the darker colour could never in the progress of time become that of the lighter. Assuming that this hair, the hair of the undoubted Roger, is of the same colour as the defendant's, that even if it were in the mass, and had the advantage of being carefully kept, and oiled, and so forth, it would not be darker than the defendant's—as to which I will not trust to my own sight to form any judgment, though I may observe that in the main it looks rather darker, and if oiled and greased might possibly look still darker—I do not know how that may be, and I will not express an opinion whether it would permanently acquire a darker hue or not, though I take for granted hair will for a time acquire a darker hue—passing that by, I return to the position with which I started. If the hair sent home from Chili was cut off from the head of the defendant, the defendant cannot be Roger. That hair might darken to the colour which the defendant's hair now exhibits, as with years the hair of a boy or of a youth gets darker until it acquires the shade at which it permanently remains; and that hair, which Dona Ahumada has sent a quarter of a lock of, might very well become hair of the colour of Roger's or of defendant's; but the hair cut off from the head of Roger in 1852 cannot have become the colour of the lighter hair in 1853, the earliest period at which hair can have been cut from the head of Roger in South America. That is as clear as that two and two make four, or as the sun at noonday.

Now, then, did Dona Ahumada cut off a lock of the defendant's hair? And the answer is available for more purposes than one; because if she did cut off a lock of the defendant's hair, it is not only that the hair of the dark colour could not have become the hair of the light colour, but it is an additional circumstance to show that the man from whose head that was cut off must have been at Melipilla a much longer time than a fortnight or three weeks; and, moreover, it would lead fairly to an inference respecting his age. An old lady petting a young lad who has ingratiated himself in



the favour of the inhabitants might well have said, "Let me cut off a lock of your hair, I should like to keep it." But it is a very different thing with a young officer, a young fellow of four-and-twenty, as regards the degree of intimacy it implies. A lady does not say a thing of that sort to a gentleman who has been staying in a place for two or three weeks only. It implies a familiar intimacy which must have resulted from a longer intercourse, and therefore it would confirm the idea that it was cut from the hair of some one who stayed a year, or a year and a half at Melipilla, and not a fortnight or three weeks. But did she cut off this hair or not? As to that, if we judge by the letters of Mr. Holmes, and the letters of the defendant to the people he was addressing out there through Pedro Castro, or his letters to Mr. Rous, there is the clearest possible recognition of the fact of Dona Ahumada having cut off a lock of his hair, and the acceptance of this particular lock as the lock in question. But then the defendant, on that being put to him, and this difficulty about the hair presenting itself, boldly asserts that no hair was cut off from his head at all. It is right that what he says on that subject should be brought clearly before you, because this is one of the critical points in the case. It is a critical question in the case for the reason I have pointed out—if that hair was cut off from the head of the defendant, he cannot possibly be Roger Tichborne; therefore we are bound to hear with patient attention what he says on the subject. If he can repel the notion that any hair was cut off his head, or that that was the hair so cut off, then any argument founded upon it falls to the ground. This is his cross-examination on the subject. A lock of hair is produced, and then it is admitted by Mr. Serjeant Ballantine and by the Claimant—I need not go through that—that this piece of hair was the hair received from Pedro Castro, who had received it from Dona Ahumada, and the cross-examination goes on thus:—"Q. You received it from Mr. Holmes?—Yes, I think there ought to be some little explanation about that—about the hair: you must understand I gave Mr. Holmes authority to open my letters before I received the letters. Those letters were translated. I remember the evening that letter came to my house. Mr. Holmes came in with another gentleman: the letter was in his possession and translated. Q. What letter?—The letter of Castro. He said to me, 'Do you remember a lady in Chili cutting a lock of your hair off?' I said, 'No, I do not.' He said, 'Oh, nonsense.' I said, 'Certainly not.' He said, 'Do not you think somebody cut a lock of your hair off?' I was not certain whether any one had done so or not; I could not say; and the letter I wrote back was a letter, I believe, partly dictated by Mr. Holmes, and so there it is. Q. Was not this true—the Solicitor-General reads a passage from his own letter—'My friend, I wish you to beg Dona Francisca Ahumada to send me a small

portion of the lock of my hair which she has kept, not to send all, but only a small portion?—Yes; I think you will find that was the part dictated by Mr Holmes. **LORD CHIEF JUSTICE BOVILL:** Which letter is that?—The **SOLICITOR-GENERAL:** His own letter to Don Pedro Castro?—Quite so; I know it is my own letter; you must understand, in the first place, I have not mentioned the name of that lady, neither did I know the name or the lady. *Q.* Do you mean to say that Dona Francisca Ahumada did not cut off a lock of your hair?—I have no recollection of ever knowing her. *Q.* You have no recollection of ever knowing her?—No; or her name either. *Q.* Do you mean to say that she did not cut a lock of your hair off?—Yes; I mean to say she never cut a lock of my hair off. *Q.* Then, why did you say that you wished to beg Dona Francisca Ahumada to send you a small portion of the lock of your hair which she had kept; not to send it all, only a small portion?—Because I was persuaded by Mr. Holmes that somebody must have cut a lock of my hair off. *Q.* You believing that it had never been cut off at all?—I could not say. *Q.* Attend to me. You believing that it had never been cut off at all, wrote at the instigation of your attorney, to beg Dona Francisca Ahumada to send you home a small portion of the lock of your hair which she had kept, in order that you might show it to impose on other people.” Then Mr. Serjeant Ballantine interposes, and says, “He did not say that? There is no imposing on any one in the matter. *Q.* For what purpose did you want the lock of hair that Dona Francisca Ahumada had kept, and that she was to send home?—For what purpose? why, to have a look at it. *Q.* And what did you mean by giving your sincere thanks and respects to the Senora de Ahumada, and telling her that she had done you a great service by preserving that lock of hair?—I was not to know whether it was my hair or not, any one might have cut a lock of my hair unbeknown to me. *Q.* Did you believe it to be your hair?—When I saw it? *Q.* When you wrote back that letter to the Senora de Ahumada you sent that message?—Probably; for, from the letter that I received from Castro, I thought it was my hair. **LORD CHIEF JUSTICE BOVILL:** When you received the letter from Castro you thought it was?—It might be that she might have cut it off; I did not know at that time he was alluding to another person. The **SOLICITOR-GENERAL:** We will come to the other person; did you, when you got it, give your sincere thanks and respects to the Senora de Ahumada, and send her a message that she had done you great service by preserving that lock of hair?—Yes. *Q.* What was the meaning of that if it was not yours?—I did not know but what it was mine. *Q.* Did you think it was yours?—There is no doubt at that time I did think it was mine. *Q.* Do you now think it yours?—No; because I have read the evidence, and find it was not mine.

Q. You find that it was cut from the head of Arthur Orton, do not you?—Yes, I do. Q. Did you ever suggest to anybody till this moment that that was not your hair?—Yes, certainly I did. Q. To whom?—To plenty of people; I told Mr. Holmes before ever I wrote for it, that I never remembered it being cut off. Q. That is not my question; did you ever suggest to any human being till now that that lock of hair that was sent back to you, which has just been produced, was not your hair?—Certainly I have. Q. To whom?—To my advisers—to Mr. Spofforth and Mr. Moojen too. Q. After the receipt of the Chili Commission, and you found it was sworn it came from Arthur Orton?—Probably it was after that. Q. Did you ever suggest to any human being a doubt about it before?—A doubt about it? Q. A doubt about it being your own hair?—I do not see I could suggest, according to those letters. Q. Did not you write on the 20th of April, 1868, just after you had received it, saying you had received another letter from Don Pedro Castro of great importance—‘he has sent half of my hair back in the letter, and you shall have a copy of it?’—Who is that to? Q. Never mind; did not you write that?—Who is that to?” he asks. We know to whom it was written; it was to Mr. Rous. “Q. Did you not write that?—No; I will have the letter read. MR. SERJT. BALLANTINE: Do not answer at present. The SOLICITOR-GENERAL: Did not Mr. Holmes compare the hair with yours?—He did. Q. Before he wrote this letter?—What letter? Q. The letter of the 1st of May, 1868? LORD CHIEF JUSTICE BOVILL: When the hair arrived did he compare it?—I believe he did. The SOLICITOR-GENERAL: And do you know that he wrote to say, ‘the lock of hair which you were good enough to enclose to Sir Roger is of considerable importance, because it is identically the same as his hair at the present moment?’—I believe he did write that. Q. And was it?—I suppose it was in his opinion. MR. SERJT. BALLANTINE: In his opinion. The SOLICITOR-GENERAL: Was it in yours?—Really I cannot judge of my own hair; to do that I should have to cut a piece off, and put alongside of it. Q. Did they take a piece off and compare it?—I think not. Q. Could you not compare it in the glass?—Yes, I dare say you might do so with the glass. Q. Do you really mean to say, that before you wrote this letter to Don Pedro Castro, and before Mr. Holmes, to your knowledge, wrote his letter to Don Pedro Castro, that you had not taken the trouble to see whether that was your hair, and whether it was like it?—I do not believe I did; they said it was, and that was quite sufficient for me. Q. LORD CHIEF JUSTICE BOVILL: Said it was what?—Said it was like my hair. Q. The SOLICITOR-GENERAL: Who said it was like your hair?—Mr. Holmes. Q. Mr. Holmes, and who else? who besides? who were they?—If I did make that mistake you need not be quite so



sharp. *Q.* Who said it besides Mr. Holmes?—I said only Mr. Holmes. *Q.* You said ‘they’?—You need not be quite so sharp. *Q.* Did anybody say it was, besides Mr. Holmes?—I do not know; I am sure I do not remember. *Q.* Take the lock of hair that was produced in the Chili Commission?—I have looked at it. *Q.* Look at it again; is it in your judgment like your hair now; look at Mr. Holmes’s one (handing it to the witness). Is that in your judgment like your hair now?—No, I do not think it is. *Q.* You do not think it is?—I think it is fairer hair than mine. *Q.* Did you think it was like your hair when these letters were written?—I do not think I took any particular notice of it; I do not believe I did.” Then he is pressed upon it at length. I pass over a good many questions and answers and come to this, “When you saw that hair on that occasion did you or not form a judgment as to its being like your present hair? *MR. SERJT. BALLANTINE:* His then hair? *THE SOLICITOR-GENERAL:* Your then hair?—I cannot say whether I did or not. *Q.* What made you write this letter to say that she had done you a great service?—Because Mr. Holmes told me she had done so. *Q.* What great service had she done you?—I do not know, I am sure—sending the hair, I suppose. *Q.* What great service did you suppose she had done you?—I suppose by sending the hair. *Q.* What great service was that, if it was not to be of use to you in your cause?—If it had been my hair it would have been. *Q.* ‘Tell her she has done me a great service by preserving the lock of hair.’ What great service had she done?—I do not know she had done any service. *Q.* What do you mean by saying that?—Really I do not know; those letters were all of them more or less other people’s than mine. *Q.* Do you mean that they were not true?—I do not mean to say that they were not true. What I mean to say is, that the dictation of those letters were more other people’s than mine. For instance, that word ‘has’ has been put in. I am very neglectful; I ought to have said ‘it might be of service,’ whereas, in the letter it is ‘it has done me service.’” Then the Lord Chief Justice reads the words to him. Then the Solicitor-General asks him whether the words should have been “tell her she might have done me a great service by preserving this;” and he says, “No, I should think it would be more proper to say that the lock of hair she has sent might be of service to me. *Q.* ‘Might be of service to me’?—Yes. *Q.* I do not understand what service it might be; is it because she had preserved this lock of hair?—Supposing it had been a lock of my own, and it had been sent home, it would have been of service, would it not? *Q.* You say she had done you great service by preserving your lock of hair: What service?—I do not think she had done me any service. *Q.* What did Mr. Holmes mean by saying ‘it is of considerable importance, because it is identically the same

as his hair at the present moment'?—There is no doubt Mr. Holmes believed it was a portion of my hair. *Q.* Did you say one syllable to Mr. Holmes to lead him to doubt it?—Yes, I think I did. *Q.* Will you swear you did?—Yes, I will swear it. *Q.* At that time?—I told him at the time that nobody had ever cut any lock of hair off my head." You see he goes back to that. Well, this goes on a very long time, and I do not know that it is materially altered. Then his attention is called specifically to the letter to Mr. Rous, in which he says, "We have received another letter from Castro of much importance, as he has sent me part of a lock of my own hair in the letter." You must judge on the whole. Then it occurs to the Chief Justice that he made an affidavit of his not being Arthur Orton, and in that affidavit, of the 7th of April, 1867, he had referred to this very lock of hair; stating in it expressly that he had received a lock of his hair from South America. Then he is asked, "Do you mean you had told Mr. Holmes, when you made that affidavit, that nobody had cut off your hair?" "Yes," he says, "most undoubtedly; previous to my swearing that affidavit, a long while before the time, Mr. Holmes asked me if I ever had a lock of hair cut off, and I said, No. After reading Castro's letter I thought such a thing might have been done unbeknown to me. *Q.* After reading Castro's letter you thought such a thing might have been done unbeknown to you?—Just so."

Such, Gentlemen, is the defendant's statement with reference to the important matter of the hair. The undoubted facts are that he at once responds to the offer of Pedro Castro to send him a portion of the hair taken by Dona Ahumada, by desiring to have a portion of it sent over—not the whole, lest it should be lost—showing that he appreciated its value. Then he writes his sincere thanks for the service Dona Ahumada had done him. He writes to Mr. Rous, saying Castro had sent him over a portion of his hair. So that on the whole, up to the return of the Chili Commission, no doubt whatever is cast on this being his hair. There can be very little doubt—indeed the defendant, as you have just seen, admits as much—that Don Ahumada said on the Commission that the lock was cut from the head of Arthur Orton. Then for the first time the defendant says that he told Mr. Holmes at the outset, when Don Pedro's letter came, that he did not remember anyone having cut off a lock. Then he says the letter was written at the dictation of Mr. Holmes, and that all he wanted the hair for was to have a look at it and see whether it was like his. He does not dispute that when Mr. Holmes did look at it, Mr. Holmes believed that it was his hair, and wrote to Pedro Castro under that belief. You must form your judgment under all the circumstances whether you do believe that this hair was, as Dona Ahumada seems to have told Castro, and Castro communicated to the defendant, cut off from the head of the young Englishman out there. If that young

Englishman was the defendant, the consequence follows to which I have called your attention, that while the light hair might in the course of time become dark, the dark hair cannot have become light; whence it follows that the light hair cannot have been cut from the head of Roger in 1853, when most undoubtedly, if any hair was cut from the head of Roger, it must have been cut. You must draw your own conclusion from the whole of it. If you come to the result that the hair sent from Chili was hair cut from the head of the defendant, it follows that the defendant cannot be Roger; and if not Roger, then as the only Englishman who was out there was Arthur Orton, it would seem to lead irresistibly to the conclusion that the defendant is Arthur Orton.

But you must not come to that conclusion without listening to the evidence which the defendant adduces to show that he is not the Arthur Orton of Melipilla. He calls two witnesses for the purpose of proving that they knew Roger when in Chili, that they recollect the defendant, and that the defendant is Roger Tichborne. The first of those is Mr. Bingley, who was staying at Santiago on the occasion of both visits made to that place by Roger Tichborne, who on both visits resided at the English hotel at Santiago. The witness did not make Roger's acquaintance; but he recollects perfectly his being there; he used to dine on the first occasion at the table d'hôte where Roger dined also, and he saw him about the place. He comes and says pretty positively that the defendant is Roger Tichborne. When he saw the account of the last trial in the newspapers he recollected having seen Roger, and he put himself into communication with the defendant's counsel; the result was that the defendant went down to Edgbaston, where Mr. Bingley lives, and called on him, and Mr. Bingley says, "I recognised him at once. He came in at the door and he accosted me, 'Mr. Bingley, I believe.' I said, 'Yes.' He said, 'Do you recollect me?' I said, 'No, not at the instant; pray walk in.' I do not know which was first, whether I said, 'Mr. Tichborne,' and he said 'Tich.' It was coeval with my saying, 'Pray walk in.' Q. What do you say he said?—He said 'Tich.' I said 'Tichborne,' of course. Q. Who pronounced the word 'Tich' or 'Tichborne' first?—It is difficult to say. I said 'Tichborne' first. I invited him in. When the light was favourable I saw at once that there was no doubt about his identity; that he was the same gentleman who I had seen in Santiago of the name of Tichborne." So far this witness speaks very positively as to his identity. When he comes to be cross-examined he is shown the daguerreotypes taken in Chili; and then he says, he has not sufficient recollection to say whether those daguerreotypes are like him. "Q. Have you such a latent recollection of the Roger Tichborne, that a perfect likeness of him would bring back the man to your mind, or has your recollection of him gone?—My recollection



of the man is a certain expression, and cast of countenance, and general manner, which I recognise. Q. Nothing beyond that?—Nothing beyond that. Q. Nothing whatever?—Not a detailed feature whatever. Q. You could not describe the eyebrows?—No. Q. Or his nose?—Not any single feature.” He is obliged to admit that he has not sufficient recollection of the individual to be able to say whether a portrait is like him or not, and that a portrait, although like, would not bring back a recollection of his features. His evidence of identity cannot, therefore, be worth very much. But then he speaks to a conversation with the defendant, and from that conversation we are to infer that the defendant must be Sir Roger. He tested him by various questions. First he says, “I asked him whether he recollected Dr. Barrington.” Now that you know is what we call in law a leading question. If you want to test a man’s recollection of a person in a particular locality, you would say, “Can you tell me the name of any person living in such a place?” If you ask him whether he recollects A. B., or C. D., nothing is easier than to answer, “Yes.” He says, “He seemed to hesitate, and then after a bit, he said he recollected him very well.” Then he says, “I tested him with several other names. I said to him, ‘I shall ask you a few questions.’ He said, ‘Ask me whatever you like; I come here to be identified, for they dispute I am myself!’ Then I asked him, ‘Did you know a Mr. Sherriff?’”—With regard to Mr. Sherriff, it appears that the witness—you will remember the old gentleman, a somewhat garrulous witness, and who, I should think, would not be the safest person to trust in the matter of identity—says the defendant did not recollect him for some time, and then the witness told him Mr. Sherriff was engraver for the Mint; and then the defendant said, he did recollect him and knew him. Then he asks him if he recollected Mr. Helsby, and he said he recollected him well. At that time Mr. Helsby’s name had come up on the trial as the photographer who had taken the likenesses of Roger. The defendant answers, “Oh yes, I recollect Helsby.” Then he is asked, “Did he say anything about Helsby?—Not on that occasion? Q. Do you mean at that interview?—I do not recollect. The LORD CHIEF JUSTICE: Was that all that was said about Helsby?—I went to other names from that. Dr. KENEALY: What other name did you put to him?—A Mr. Karg, a German.” Then the defendant seems to have given a description of Mr. Karg; it was not suggested by the witness, as far as we can make out, and it certainly is a striking fact. He said he recollected Mr. Karg, and that he was a great linguist. Mr. Bingley says that was the fact, that Mr. Karg was acquainted with many languages. Then he put another name to him, “I asked him if he recollected Mr. Purdy. He hesitated at the name, but afterwards recollected it. His memory,” says the witness, “was very imperfect.” Then

he asked him, "Do you recollect Appleby?—Appleby, Appleby, oh yes, I recollect him. I was out at his place." The witness stated that he had seen Mr. Appleby with Roger Tichborne, and that Mr. Appleby was a person out there remarkable for breeding horses; he had a remarkably fine breed of horses, and had a place some ten miles from Santiago. I do not know where he could have got those names of Karg and Appleby, except from his own unaided resources—and that is a fact in his favour—unless indeed it might have been from Moore, because Moore at this time had been brought into connection with the defendant, and was his witness on the trial, and at this time the trial was going on, as I understand. Moore, we know, resided at Santiago for some time, and may have mentioned this or that person's name, but I am merely putting this as a possibility. If the defendant recollected these persons, without having been told of them, it would go very far to show that he had himself been to Santiago. Then the witness tested him about the localities, and asks him whether he recollected the square and the cathedral, upon which the defendant answered, "Yes, he recollected the square and the cathedral, and that the cathedral was at the bottom of the square," and "that," says the witness, "was true." Then the witness asked him about the "Canana," and he says the defendant could not recollect that as the name of the public promenade in Santiago, but he recollected the "Alameda," and, says the witness, "that is accounted for by the fact that Canana was the old name, and Alameda the modern one." But on being cross-examined about it, he is reminded that on the former trial he had said exactly the reverse. He had then said he asked the defendant whether he remembered the Alameda, and the witness said he did not remember the Alameda, but he remembered the promenade under the name of Canana. Mr. Bingley further says that the defendant asked him the name of a hill in the city which had attracted his attention, because at gun-fire a gun was fired from a dismantled fort which was on it. It turned out that "dismantled fort" was the witness's own expression; the defendant had spoken of it as the remains of a battery. "Did he ask you anything else?—Yes; higher up the same hill was a building which he said had puzzled him, and he asked me what it was for. The LORD CHIEF JUSTICE: Did he say that the building puzzled him?—Yes, his words were, 'What do you call that place which has got a round roof which moves'—— Q. Did you tell him?—I told him it was an observatory erected by the government." The inquiry came from the defendant, and according to the witness his inquiry was right; what he referred to was correctly described. There was a hill in the centre of the town called the hill of Santa Lucia. It was a hill where there were the remains of an ancient battery, from which morning and evening a gun was

fired, and at the top of the hill was a building with a round, revolving roof, built by the government for use as an observatory. With reference to these things, so far as it goes, the defendant appears to have had a good deal of knowledge.

After this, the witness returned the defendant's call, and dined with him at the 'Queen's Hotel,' and they had more conversation, and the defendant tells him that he had been to Peru and to the Ecuador and Lima; "Whereupon," says the witness, "I asked him if, when at Lima, he had called at the Legation; he said he had. I said, 'Then you must have known Mr. Sullivan;' he said that he had, and had been kindly received by him, and had partaken extensively of his hospitalities during his stay. He had dined with him frequently." I was rather struck with this language, and said to the witness, "Was that his language, 'that he partook of his hospitalities?'"—He might not have used the word 'hospitalities.' All he said was that he dined with him on several occasions and had many conversations with him about Hampshire. Mr. Sullivan was Chargé and Consul-General at that time. Dr. KENEALY: Did he tell you of any other of his adventures or proceedings at any of those places you have named, at Peru and the Ecuador?—I could not learn from him that he did more than go up the country and return. The only party he knew in Guayaquil was the French Consul and he had a slight recollection of the English Consul, Mr. Cope. The LORD CHIEF JUSTICE: Did you ask him any questions about Guayaquil?—Merely to see— Q. What did you ask him?—Whether he knew Mr. Cope, our Consul there: he had not a clear recollection. Q. Did you ask him whether he knew Mr. Cope, the Consul at Guayaquil?—Yes. Q. What did he say about that?—He had a sort of recollection of that kind. Q. He said so?—Yes, or words to that effect: I could not repeat the identical words: He believed he had met him at the French Consul's, which was more his house. Q. Whose house?—The defendant's. All that he told me about Guayaquil was that he had ascended the river a great distance." It is perfectly correct that Roger Tichborne did ascend the river three hundred miles, as we know from his letters. "Q. Did he say anything about Arica?—I asked him if he knew our Consul there. He did not recollect him, but he gave me a description of a high mountain at the mouth of the port, a long, extensive pier recently constructed, and a long row of houses at the landing-place there, recently erected and occupied by the foreign agents of the port." He appears to have been right in his description of Arica. It was suggested, in cross-examination of the witness by Mr. Hawkins, who had a 'Gazetteer' in his hand, that all this knowledge of the cathedral, and the square, and the public promenade might have been acquired from any 'Gazetteer' or work giving an account of Chili



and of Santiago, which, we know, is its capital; and the same thing may be said with regard to Arica. Besides which this observation occurs to me—that, inasmuch as Arthur Orton remained on board the ‘Ocean’ for twelve months after he got out to Chili, it is not at all impossible that the vessel may have made a voyage to Arica, or have put into the port of Arica, and that so there would have been full opportunity of seeing what it was like. However, there is the evidence. Then they call a witness of the name of Helsby, sister of Mr. Helsby, the photographer of Santiago; and all she has to say is this—that on one single occasion she saw Roger Tichborne in the street, and was told that it was he; that she was struck by his manner of walking (walking with one knee bent); and she undertakes to say that she believes the defendant to be that Roger Tichborne. Having seen the defendant since, she says she asked him a question. She was aware that Roger had gone out shooting guanacoës with her brother, and that he brought home a guanaco, and she asked him whether he had been guanaco-shooting with Mr. Helsby, and he said, Yes, and that he had brought home a guanaco. And it is the fact that Roger had a guanaco, and that it was left with Moore. Whether the defendant got his knowledge of this guanaco as Roger, or whether he got it from Moore after he was brought into connection with Moore, may be a question. That is the whole of the evidence adduced on the part of the defendant with reference to South America.

I have observed that, according to the evidence of both these witnesses, Roger Tichborne on both occasions when at Santiago went by his own name, which renders it very unlikely that, if ever at Melipilla, he should not have gone by his own name there as well. But the name of Roger Tichborne, as the Castro correspondence plainly leads one to infer, was unknown at Melipilla.

Then the learned counsel for the defendant uses a very fair argument. He says, How can this be Arthur Orton? how can he be other than Roger Tichborne, seeing the knowledge he has displayed of the travels of Roger in South America? How could these things be known to Arthur Orton? And it is very true the defendant does follow the footsteps, step by step, of Roger from Valparaiso to Rio Janeiro, with one exception, namely a mistake about the journey from Valparaiso to Santiago; and this would be very wonderful, and indeed overwhelming, were it not that we know that the letters of Roger Tichborne to his father and mother have been preserved; at all events, we have some of them here, and they give an account of the proceedings of Roger Tichborne, step by step, throughout the whole of his progress; therefore there would be no difficulty about the defendant’s acquiring knowledge through those letters. We do not know for certain whether those are the letters he wrote to his mother about in April, 1867; whether they are or not, they were in

his possession, and he had full means of consulting them. If he had to make up his story, he would, in all probability, do so; at the same time it is right to observe that, even if Roger Tichborne, he would naturally look at them to remind him of what happened so many years before, so as to be able to give an accurate account of his proceedings in South America. But the learned counsel points out that there is one important statement he has made which he could not have derived from any such source, and that is the one about the accident to the mule. And it is very true that the letters, which have been produced, written by Roger Tichborne to his father and mother, giving the narrative of his passing over the Andes, do not contain any account of the accident to the mule; but it is fully set out in the extract from his journal, which he sends to Mrs. Seymour and to Lady Doughty; and in his letter to his mother, written before either of those extracts were sent, he writes to say, "I have not time to send you an extract from my journal now, but I will from the next place I stay at." It is, therefore—as I have already fully pointed out—not unreasonable to suppose that, on arriving at the next place at which he made any stay, he would send an extract from his journal to his mother, and if he did there is the narrative. Moreover, it is my duty to point out to you that in the defendant's account of the accident to the mule he makes two mistakes. The accident to the mule happened in crossing the first chain of the Andes, and he represents it as having happened in crossing the second. Again, when the accident happened, Roger expressly states that, the mule having fallen some fifty or sixty feet with the luggage which was strapped on her back, they "all three," he, his servant, and the guide—he had stated in the outset that those three constituted the expedition—all went down to where the mule was. The defendant says that the guide and he went down; that Jules Barraut, who was a witness against him, and of whom therefore I suppose he wanted to speak disparagingly, refused to go down. He says, "He and I had words about it, because he would not go down with us, and help to pick up the things that had fallen off the mule." But Roger expressly says that "all three" went down. So that there are two serious mistakes with reference to this part of the narrative. If the defendant derived his information from the extract from the journal, he either had not sufficiently studied it, or had forgotten it.

Before I quit the part of the case that relates to South America there is one point more to which I desire to draw your attention. It may be asked—I am not sure whether the learned counsel for the defendant used this argument, but it has occurred to me that it may very well be asked—how is it possible that Arthur Orton, the uneducated Wappingite, who probably never had heard of the tenets of the Roman Catholic religion—who either went to church or to

meeting, according as his father followed one or other of those forms of worship—should have known anything about the Roman Catholic religion? How, when he was in Australia—because if he was the Arthur Orton of South America he must also be the Arthur Orton of Australia—how should Arthur Orton have learnt, either by looking at the outline in the ‘Illustrated News,’ or at the ‘Baronetage,’ or any other source from which he may have discovered that the Tichborne family was an old Roman Catholic family, or when he learned from Lady Tichborne the fact that Roger was a good Roman Catholic, if he did not know it from an earlier source—how should it occur to the defendant, if Arthur Orton, in writing to Lady Tichborne, to say, “May the Blessed Maria have mercy on your soul”? How could this man, if he was the ignorant man Arthur Orton must necessarily have been, be aware that, according to the Catholic faith the Virgin had power in Heaven as mediator and intercessor for man? Well, at first it does puzzle one, but I cannot help thinking that, if the other circumstances all point to Arthur Orton, a solution of this difficulty may possibly be found in the fact, of which it is true we have no positive proof, but which I think we may inferentially assume, that Arthur Orton did in South America become a Roman Catholic. He certainly was not one before he went there; but Arthur Orton, I think we have probable ground for believing, was rather what might be called a wily individual, and he may have thought that the best way to ingratiate himself with the inhabitants there was to turn Roman Catholic. They are very strong Catholics out in those parts, and look upon a heretic as only very little removed from the Evil One; and it would have a wonderful effect upon them if Arthur Orton was to say “I like your religion much better than my own; it speaks much more strongly to me than that of the chapel I used to go to when in Wapping; I will turn Roman Catholic.” “Very well,” the answer would be, “we shall be happy to receive you into the pale of the church, but we don’t know that you have been baptized, you must be baptized, and we must give you a new name; we cannot look on Arthur as a proper Christian name, and you must have a new one.” You will naturally ask me how I get at all this? how I draw such an inference as that which I am here suggesting? My answer is this. I do not know whether it has escaped your recollection—it may have been overlooked, but it is a fact—that when Arthur Orton shipped on board the ‘Jessie Miller’ to come home, he did not ship in the name of Arthur. He shipped in that of “Joseph M. Orton.” What does M. stand for? I apprehend Maria. Why does he sign Joseph M.? He had no motive for concealing who he was. He had lost his register ticket it is true, but he could ship, and did ship, without one. There is no doubt of its being Arthur who signed Joseph M.;



that was admitted from the beginning. When he came to London he immediately became Arthur Orton again. The change of religion had served its purpose; the name might consequently be dropped. The addition of "Mary" to the name would be laughed at here, but not so abroad, because nothing is more common there than for a male to be baptized with some ordinary male Christian name, with the name of Maria, or Marie, appended to it, so as to bring him, as it were, under the protection of the Virgin. In Roman Catholic countries it is very common. A familiar instance, with which everybody is acquainted, is the name "Jean Marie Farina," and many other instances might be given. It is a common thing, and we have an instance in this very case. One of the friends who received the defendant into their houses, and were kind to him at Melipilla, was José Maria Toro, the brother of Pablo Toro. If Arthur Orton was re-baptized and wanted a godfather, José Maria Toro was extremely likely to be that godfather. When Arthur Orton signed "Joseph M." he probably did not put the Maria, because the addition of a woman's name to a man's, which is so unknown with us—I do not think the English Catholics do it—would have only made him the laughing-stock of the rough sailors on board the 'Jessie Miller;' for which reason he only signs "Joseph M."; but when I find him signing Joseph instead of Arthur, and adding M. to it, and bear in mind that he had been intimately acquainted with José Maria Toro, it seems to me the only way you can account for his signing "Joseph M." is that he had been re-baptized in the name of José Maria, which would exactly tally with the Joseph with the addition of M.; and if so, that would lead us to the inference that he had been re-baptized on being admitted into the Catholic Church. But if the defendant was admitted into the Catholic Church he would learn, as one of the earliest things, as one of the rudimentary tenets of that church, the power of the Virgin as an intercessor, all-powerful to protect through mediation and intercession. And, consequently, when the mother writes out that Roger was a good Catholic, the responsive answer comes immediately, "May the blessed Maria have mercy on your soul." But, again, why Maria? No English Catholic, I apprehend, would have written Maria. It strikes me forcibly that Roger, as an English Catholic, would not have said, "May the Blessed Maria," he would have said "the Blessed Mary." But if the defendant first learnt the name of the Virgin in South America, and first heard the name as Maria, it might well account for his writing Maria. To be sure it may be that Roger, when in South America, had so long heard the Virgin called Maria, that he used that name; but it is also capable of the interpretation that, whereas Roger would have well known that the English for Maria was Mary, the defendant, who had never heard the

name but as Maria, wrote Maria. In English we have the two forms. The name Mary is derived from the Latin, or rather from an earlier source than that, the Hebrew. An Italian or Spaniard says, Maria; a Frenchman, Marie; we say, Mary. We have also retained the Latin form, Maria, but as a distinct name; we never confound the two; they are as distinct as Mary and Elizabeth, except that they are derived from a common source; therefore an Englishman, whether a Catholic, or a Protestant, would speak of the Virgin Mary. But if a person acquired his first knowledge of the Virgin, as a mediator and intercessor for man, by the name of Maria, when he first came to speak of her he would speak of her by that name. I cannot understand the defendant signing "Joseph M." in the place of his true name, Arthur, unless upon the supposition that he had been re-baptized in those names, and that he sunk the Maria in the initial "M.," and when he came to England he dropped the whole thing, caring no more about it, and resumed his name of Arthur, and from that time went as Arthur Orton. In this way the reference to the Virgin may be accounted for, and the "Blessed Maria" of the Australian letter may possibly connect itself with the South American life of the defendant. Whether this be so or not it is for you to judge. It is the only way I can account for his assuming the name of Joseph with the addition of the initial M. My Brother Lush reminds me, that though we have no proof of the fact of the re-baptism, as we have not the evidence of the Chili Commission, the letter of Castro implies there was a belief out there that he had been baptized, and Dona Hayley was going to interpose something about it when I stopped her, because it was hearsay; she had not heard it from Roger himself; but that they believed it out there is pretty clear from Castro's letter. If this be so, it is a circumstance which, to my mind, must be taken into account adversely to the defendant, as it is quite out of the question to suppose that Roger would be re-baptized. He was almost born a Catholic, he was bred a Catholic, and would not require to be admitted into the pale of the Church to which he already belonged; therefore re-baptism in the case of Roger would be perfectly out of the question.

Gentlemen, we have now ended the Arthur Orton case so far as South America is concerned, but of course the Arthur Orton case does not end there; for the Arthur Orton of South America is the Arthur Orton of Australia, and we must follow him to Australia and see how far the facts connected with his existence in Australia lead us to the conclusion that the defendant is Arthur Orton or not.

Now, we know that he came back to London in the 'Jessie Miller' as an ordinary seaman, and arrived here in the middle of 1851, and stayed at Wapping until the November of the next year, 1852. It

is not necessary to dwell at all upon his life during that time, with one exception, which is, that, after his return, he was engaged, as he had been in his early days before he left, in his father's business, assisting in the father's shop, and carrying meat to the vessels in the river, which may account, perhaps, for what we hear of Arthur Orton when he afterwards gets to Australia. He went out, in the first place, to Hobart Town. He reached Hobart Town in the early part of the year 1853, and we hear of him there not only by the letters which he wrote home—one letter to Miss Loader and another to his sister Mary Ann—we hear of him also through two or three very important witnesses. Allen, who went out as cook in the 'Middleton,' the ship the defendant sailed in, identifies him, and expresses his belief that he is the same man. Then a man of the name of Hawkes, who was at Hobart Town, professes to remember him also as the man who landed there from the 'Middleton' with the Shetland ponies. Then the story is taken up by Mrs. Mina Jury, who married the brother of the Jury who married a daughter of old Orton, and she says that from the time he landed until August 1855, he was constantly at Hobart Town. In the commencement he began as slaughterman for some of the butchers at that place. Then the Jurys got him, through a Mr. Mansfield, employment with a Mr. Johnston, a large station proprietor, who was also the owner of Mewburn Park, which we shall hear more of presently, and he continued in Mr. Johnston's employment as stock-keeper for some time. Then he came back to Hobart Town and set up a stall in the new market which had been recently opened there. Then we have the circumstance of his borrowing 14*l.*, which, owing to a mistake of Mrs. Jury in giving him a 5*l.* note instead of a 1*l.* note, became 18*l.*, he giving his promissory note for 14*l.*, which was produced before us. The note became due on the 25th of August, but the money was never realised, in consequence of his absconding and going away from Hobart Town altogether, from which time to the present Mrs. Jury had never seen him. She takes on herself to say the defendant is the man. If you can trust to her recollection, which goes back to a remote period, she ought to know. She was in communication with him: she saw him often: she saw him on the occasion of his borrowing the money, and she declares the defendant is the man. He went out with a letter of introduction to her husband and herself, and they saw him frequently. That is however, a long time ago, and I distrust evidence of identity after a long lapse of time, unless there is something to fix it very strongly on the mind, or unless the other facts and circumstances of the case confirm it. However, she loses sight of him in 1855; when she went to get her money on the promissory note he was gone; and the next we hear of him, on evidence at all reliable, is from a witness of the name of Hopwood, a man who was engaged upon a fencing contract to



make wooden fences—which they use so much in Australia, where wood is so abundant and plentiful—at Mr. Johnston's, at Mewburn Park, which occupied the witness upwards of a year and nine months. He tells us there was a man there named Arthur Orton, whom he identifies as the defendant, serving as a stock-keeper during the time he was there; that he was in the habit of slaughtering for the establishment, and was called the big butcher; that on one occasion he saw him dressing a beast, and being struck with the way in which he did his work, he said: "Well, you dress that like a tradesman;" upon which Orton answered that he knew his business, and had lately been a butcher on board a ship; he said he had come out to Hobart Town, and had there been engaged by Mr. Johnston, and having engaged in Mr. Johnston's service had come to Mewburn Park, which was the place where, at this time, Mr. Johnston was residing. This man, the witness says, after staying there a year and nine months, left and went to Boisdale, a station about eight or nine miles off—which is the Boisdale Station of which we have heard so much in the course of this inquiry—and he says he afterwards saw the same man at Dargo. He says that this man, Arthur Orton, stayed at Dargo only two or three months—he is wrong as to the time; Orton stayed there upwards of a twelvemonth. The next thing he says he saw of him was, that he was breaking horses at Sale, which was, he says, about the year 1858. Arthur Orton did not go to Sale till quite the end of 1858 or the beginning of 1859, but that he was at Sale breaking horses is an undoubted fact.

Then, Mrs. McAlister takes up the story. She tells us she was living at Erin Vale, which was on the other side of Merriman's Creek, her brother being then employed at Mewburn Park as manager; and that on one occasion, being on the other side of the creek, she saw a man with her brother driving cattle, and that this man afterwards, when she and her husband were transferred from Erin Vale Station to Boisdale, came into their service there, and was known there as Arthur Orton. This man she identifies with the defendant.

Now, was the defendant at Mewburn Park? He denies it positively. He denies ever having been in the service of Mr. Johnston at all. He is asked in cross-examination, "Did you know a Mr. Hopwood, who had been for some time a butcher?—I did not. Q. And was he in the service of Mr. Johnston, of Mewburn Park?—I do not know any butcher of the name of Hopwood."—So far as I am aware there is nothing to show that Hopwood had ever been a butcher.—" Q. You do not know any such person?—No. Q. Were you in service with him under a Mr. Johnston about a year and nine months?—I was never in Mr. Johnston's employ. Q. Did you leave Mr. Johnston to go from Mr. Johnston's employ to Mr. Foster's employ at Boisdale?—I did not. Q. Did you see Hopwood there?—I did not." We thus have the defendant in direct contradiction

with Hopwood and Mrs. McAlister, and I fear to stop to inquire how many more witnesses have by this time committed perjury if the defendant has not. He swears he never was in Mr. Johnston's employ at all. But a book is produced, called 'The Rivals,' which Mrs. McAlister says was lent to Arthur Orton when he was at the station, and on the inside of the cover of that book, 'The Rivals,' there is, in what I cannot but think is the unmistakable handwriting of the defendant—I shall call your attention to the handwriting more particularly presently—"Mr. Johnston, Mewburn Park, Gippsland;" and if that is his handwriting—of which you must judge from the inspection of it—it would certainly look as if he knew very much more of Mr. Johnston, of Mewburn Park, in Gippsland, than he has thought proper to tell the Court.

Now that the man who was at Johnston's and afterwards came into the service of Mr. Foster at Boisdale was Arthur Orton there cannot be a doubt. We have not only the evidence of Mr. and Mrs. McAlister, but we have the Boisdale books which contain the account kept with Arthur Orton from the 15th of December, 1856, to the October of 1858, so that there can be no doubt that Arthur Orton was there during that time.

Now was it the defendant who was there as Arthur Orton, or are they two different persons? As to this we start with the indisputable fact—indisputable, I mean, if you believe the evidence of Mr. and Mrs. McAlister and the books—that Castro, as distinguished from Orton, was not at Boisdale and Dargo. There is the positive evidence of those two witnesses that he was not there, and the books fully and abundantly confirm them by showing that there is not only no account with Castro, but that Castro's name never appears at all, either in the index or in any part of the books. If you come to the conclusion that Castro was not there—in other words, that Roger Tichborne was not there in the name of Castro—a matter which I have discussed in an earlier part of my address to you—then we have the same species of dilemma which we had in the case relating to South America and the presence of Arthur Orton and Roger Tichborne there. The defendant having said that Roger Tichborne was there as Castro, if there was no Castro there, it would seem to follow that there can have been no Roger Tichborne there. But if there was no Roger Tichborne, then, as the defendant certainly was there, and it is equally certain that Arthur Orton was there—if he was there and Arthur Orton was there, and there is no trace whatever of Castro being there—it would seem to follow that he must have been there as Arthur Orton. Not conclusively, indeed, because he may have been there, though not as Castro, yet in some other name or character; but then he has not told us of any other name or character, nor have we any trace of any other. And we have a document here from which an inference may be drawn of a very conclusive character.

We know from Mrs. McAlister that this book, 'The Rivals,' was hers. It was one of a collection of books they had at the station for the amusement of the people employed there, when they were at home after work, and this book had been lent to Arthur Orton, and when it came back to her possession she found this written on the fly-leaf of it: "This day I have received a letter. from Donald MacDonald. With the seal broken. I Arthur Orton here make a vow on this book. Although not a Bible. It bear a cross. That has i am a man of Bone Bloud and flesh. i will find out the man if possible. that broke the said seal. and that i will punish him according to the laws. of my country. Sined Arthur Orton Dargo 11 March 1858"—which is the time Arthur Orton was at Dargo.

Now, Gentlemen, you will have the goodness by-and-by to take that in your hands and compare it with the writing in the letters of the defendant—a writing so very peculiar, that I think next to impossible to make a mistake about it. There are certain letters which are peculiarly characteristic; there are certain forms of spelling which are peculiarly characteristic: the word "received" is always spelt without the "i" as it is here; the letters "M," "I," "B" and "W," as we are acquainted with them in the handwriting of the defendant, are most marked, and I should say unmistakable. The capital letter "I" one has perhaps never seen formed in so remarkable a way before. Then there is the peculiarity which I have called your attention to of the full stop used for the comma. In the writing in question in six lines it occurs six times. I find here an "M," three "D's," three "B's," three "I's," and a "W," which, I must say, I cannot distinguish from the handwriting of the defendant, with which I am now so familiar—indeed, with which we have all become so familiar. There are the words "Book," "Bible," "Bone," "Bloud," and in every one of them we have the "B" of the defendant. His capital "M's" are most peculiar. There are two ways of making a capital M. The one is the text M, which consists of an up stroke, a down stroke, another up stroke, then a down stroke, and a curl at the end. The other way of making an M is in the form of a small m enlarged, with an up stroke, which does not begin on the line, but begins half way up, after which comes a down stroke, then an up stroke, a down stroke, and an up stroke, and another down stroke, so that there are three down strokes. The defendant always makes his in this form of the small m enlarged, but he does it in this peculiar manner—In the first up stroke, instead of making a simple up stroke, he loops it, or when he is writing a smaller capital m he puts a little curl instead of a loop; and I think, after a little study of his M's, you cannot mistake them. In the writing in this book there occurs "*Mr. Johnston,*" "*Mewburn Park,*" "*Macdonald,*" three capital M's all made in the way I have mentioned. His I, as I have already observed, is most peculiar. In a capital "I" there is the up stroke on the left hand



side of the I. The defendant makes a small semi-circle, and brings his down stroke through it. His "W" is remarkable from the extended arms, or wings, which he gives to that letter. It only requires a little study to become perfectly familiar with these characteristic peculiarities. When you have done so you will be at once enabled to form a judgment as to whether this is his handwriting or not. There are many other things of a similar character, as you will find, when I have occasion to bring the subject of handwriting more particularly before you. But having, I think, become familiar with the defendant's handwriting, I must not shrink from my duty by intimating any doubt of the handwriting in this book being the defendant's, though I am speaking of handwriting now in a general way only, and am most desirous that you should form your own judgment as to it, uninfluenced by me, and I shall ask you by-and-by, when I have worked out the question of handwriting, carefully to compare the handwriting in this fly-leaf of 'The Rivals,' and judge for yourselves whether it is or is not the handwriting of the defendant. If it is, it seems unmistakably to identify him with Arthur Orton, because he writes this: "I. Arthur Orton"—and so on.

In addition to the facts I have been referring to, there is another, which, I think, was pointed out when we were on the subject of Roger Tichborne—the singular coincidence of the first service of Arthur Orton being at Boisdale, then of his being transferred to Dargo, and then coming back to Boisdale, for the last two or three months. The defendant, except that he expands the time, makes his service follow exactly the same course. He is first at Boisdale, then at Dargo, each for a long time; and when he had been at Dargo, he comes back again to Boisdale for two or three months. That is another circumstance which makes in favour of his being Arthur Orton. It is not, indeed, conclusive, but it is not the least striking of the many things that have to be taken into account.

Again, there is the fact that Arthur Orton was originally in his father's shop; and after he had been sent to sea and had come back we again find him in the shop attending to the business. What is it the defendant takes to as soon as he finds himself launched on Australian life? To butchering. When he takes service as a stock-keeper—indeed, wherever we find him—he is performing the duties of slaughterman and butcher. Afterwards he settles at Tumut for a time: he sets up in business there as a butcher. He fails for want of capital and has to give it up. Then he takes to something else. He rides the mail for a time, and then settles at Wagga-Wagga. In what capacity do we find him settling there? The thing he immediately takes to is the butchering business. He becomes the assistant and foreman of Mr. Higgins as a butcher. He leaves that employment to set up as a butcher for himself. He again fails, on which

he goes back to the same employment, and becomes Mr. Higgins's man once more. I pointed out when we were considering how far the defendant was Roger Tichborne, how unlikely it was that Roger Tichborne should have taken to a business for which he could have had no peculiar aptitude, and of which he could previously have known nothing. Mr. Hopwood says he found the defendant, at the early part of his residence in Australia, cutting up a bullock, and complimented him on his knowledge of the business, and on the way in which he was doing it. When he is settled at Wagga-Wagga doing the work of Mr. Higgins, Mr. Pettit Smith goes into the shop and is struck with the neatness displayed, compared with the rough manner they do it out in Australia, and he compliments him on the way he kept his shop and cut up his meat. "Surely," says the defendant, "it would be very strange if I could not do it; I was brought up to the business; I slaughtered for Newgate Market." Mr. Pettit Smith asks him about Newgate Market, if he knew the Kings of Newgate Market. The defendant gives him a full account. He describes the brothers. He says they both had stalls in Newgate Market, but were not partners; and that one of them had cellarage under the market—all of which turns out to be correct. Of course, Roger Tichborne could not have known anything of that. If you believe Mr. Pettit Smith, whose credibility I said a word or two about before, which I shall not repeat now—if you believe Mr. Pettit Smith, you have a conversation perfectly consistent with the defendant being Arthur Orton, but anything but consistent with his being Roger Tichborne. So that matter stands.

Then we have another witness of the name of Redman. He says he took service during the sheep-shearing time in 1858, at a place with an odd name, but still a perfectly possible one—a place called "No-Where-Else," a station at the extreme verge of the land which had been taken into occupation or taken possession of at that time for the purpose of breeding cattle and sheep. They had penetrated at that time no further into the forest, and the place was called "No-Where-Else." He was engaged for the sheep-shearing, and was there three weeks, and he says there was a man there of the name of Arthur Orton, employed as what they called hut-keeper. He says they all lived in the hut in common, that is all the men who were employed at the station, seven or eight of them. He was not sure whether the man in question went by the name of Orton or Horton, but it was one of the two, and he was sure he went by the name of Arthur, and the man desired not to be called Orton, but wished them to call him "Doctor," for what reason does not appear, though I am told it is a common appellation given to a cook on board a ship, and Orton had been cook on board the 'Middleton,' and at this time was officiating as cook at this place. The witness says "he asked the man what part of London he came from; he spoke about Wapping

and the St. Katherine's Docks, and said he knew that part of London better than the witness; that his father was a butcher there and supplied the shipping. He mentioned he had a brother George who was captain of an East Indiaman. He spoke of South America, Melipilla, and Valparaiso. But his favourite topic was to talk about prize-fighters, naming the Brooms as prize-fighters in England. He also talked much about bushrangers and about Morgan, a notorious bushranger out there. He was very awkward, had very bad looks, hair lighter than the defendant's now; and the witness thought from his conversation he was a prize-fighter, but from the appearance of his hands, which he noticed one day, he felt convinced he could not be. The hand was a very small, fat hand, the knuckle-bones not visible." Then the witness speaks of an incident which happened at this time. Two troopers made their appearance in search of two black men, natives, who had murdered a pedlar. When the men of the station came home from the run, or their work, to dinner, Arthur, being the hut-keeper, ought to have been there cooking the dinner, but he was not forthcoming, and the reason, it was understood, which operated to keep him away, was that he had seen the troopers there. He had a horse for which he might have some difficulty in accounting, for he had no receipt for it, so he kept out of the way until the troopers had had their refreshment and had gone away. There was a man named Thompson there, with whom Arthur Orton had been previously acquainted. On leaving, he asked Thompson, in the hearing of Redman, not to say he had seen him there. Then the witness identifies the defendant as the man Arthur.

Now in one part the witness would seem to be in error, because he says this was at the close of the year 1858, whereas we know perfectly well that Arthur Orton did not leave Boisdale until the October of that year, and remained in the neighbourhood, fighting his suit against Mr. Foster upon his claim for additional wages, which kept him until the month of January at Sale, so that it would appear at first sight as if it was impossible that Arthur Orton should have been at this time at No-Where-Else, engaged in the service of hut-keeping, during the sheep-shearing. There is, however, just this possibility, that having left on the 8th of October and claimed his wages to the 15th for want of a week's notice, the suit not coming on until the ensuing January, though he signed the submission to arbitration in November, he may have gone to this sheep-shearing job, which only lasted three weeks, between that and the time when he came to give his evidence upon the arbitration. Or it is possible the man Redman has been mistaken as to the year. It was suggested that No-Where-Else was the name of an imaginary place, and that the statement of this witness was untrue. But the man had the appearance of a respectable man, and had been eight and a-half years in the employment of a wharfinger in Thames



Street, and in whose employment he was when he gave his evidence here. He seemed to be a decent man, and he may have made a mistake about the precise time, or it may be, as I have just now suggested, that in the interval between leaving the service and the suit coming on for trial, Arthur Orton may have accepted employment for this sheep-shearing job and gone to it. The importance of the evidence is that the witness positively identifies the defendant as being the Arthur Orton whom he says he met at this place; but, like other witnesses on the subject of identity, he may be mistaken.

There is a further piece of evidence given by Hopwood, the witness to whom I adverted before. Hopwood says that in the year 1864, being at that time engaged at some station not very far from Wagga-Wagga—that is to say, what in Australia is not very far—he went there with another man named Dyson for a little holiday, and to purchase articles of which they stood in need. When they got to Wagga-Wagga, from something they heard, they were induced to go to the shop which the defendant was keeping, and which had, he says, the name of Castro over the door. When he went into the shop the defendant made his appearance, upon which Hopwood called out “Hollo, Arthur, is that you?” The defendant made a sign to him to be silent, and told him he did not want to have his name of Arthur Orton known, that he was going by the name of Castro, and that the reason was that he had been involved in some questionable transaction about a horse. Hopwood identifies the man he saw under the name of Castro at Wagga-Wagga in 1864, with the man whom he had known as Arthur Orton, when they were together in service, as he says, with Mr. Johnston, of Mewburn Park, in 1855 or 1856. So much for that evidence. The defendant denies that he had anything to do with or ever knew Hopwood.

I pass on to a somewhat later period, to the year 1865.

In the beginning of 1865 we have the fact of the defendant's marriage, and that is one of the things which it seems to me important to consider. The person whom he married was perfectly suited to the station and condition of Arthur Orton. I have pointed out the improbability of Roger Tichborne, at least if he ever intended to resume his position in the world, marrying one so very much beneath him in rank. The same remark applies to the antecedents of the wife, which I do not wish to refer to more particularly. That is not the only thing. We have the defendant stating his age exactly according to what Arthur Orton's age would have been if he had been the person marrying, namely, thirty years of age. Roger would have been thirty-five. This must be taken into account with other things in considering the question of whether he is Arthur Orton. Next, we have the defendant allowing his marriage to be solemnized

by a dissenting minister in a private house. Is that, or is it not, more consistent with his being Arthur Orton than with his being Roger Tichborne? That is a matter again which is not unimportant to be taken into account in determining the question.

In the same year we come to the Richardson letter, and the question is, whether you can see anything in that letter consistent with the position of Roger Tichborne, or whether, on the contrary, you can account for it on any other hypothesis than that of the writer being Arthur Orton. I pointed out when we were on the subject of Roger Tichborne that I could see no motive which could have led Roger Tichborne to write that letter, which the defendant was constrained to admit was a tissue of falsehoods. Could Roger Tichborne have found any motive for wishing to know the particulars, not of Arthur Orton, but of old Orton and the Orton family. Putting Roger Tichborne aside, how does the matter stand with regard to Arthur Orton. Would he have any motive or cause that would make him desirous to know anything about the Ortons? I can see a very good reason why Arthur Orton, if he was about to come forward to claim a position which was not his own, if he was about to announce himself as Roger Tichborne, or meditated doing so, or had conceived the idea, and was balancing in his own mind whether he should take the step or whether he should not, might very well say to himself, I have been known here in Australia as Arthur Orton, and although I have now changed my name, there may be persons who may be able to identify me as Arthur Orton. What if such a thing should be suggested in England when I get there, and it should be asserted that I am not Roger Tichborne, but Arthur Orton? Would it be likely they would go to the old place in the High Street, Wapping, and inquire whether I am the Arthur Orton that some people here may wish to say I am, or may suggest that I am, either from interested motives or from a desire that the truth should be known? Before I take any decided step, will it not be wise to ascertain whether the old people are still there, whether anybody is still keeping the shop, what has become of the family, whether they are dispersed, or whether they could readily be found and made available for the purpose of ascertaining and showing who I am? I do not say that that is what occurred to the mind of the writer, but it certainly is what might have occurred to the mind of the writer. That is the only solution I can find—although I listened with the utmost anxiety to what the learned counsel had to say on that point—why this letter should ever have been written. It strikes one, when considering whether the defendant is Arthur Orton or not, that that letter may be in keeping with ideas and motives which one may ascribe to Arthur Orton, while it is wholly inconsistent and out of keeping with any motive that can be ascribed to Roger Tichborne. That must be

taken into account in the question we have now to solve; added to which, there is this striking circumstance, that whereas the man who caused that letter to be written could write perfectly well, at least well enough to answer the purpose of such a letter, he not only does not write the letter, but he does not even sign it. He gets it written by a schoolmaster, and signed in the name of Castro. Of course that letter would be shown to Orton's father or the people at his father's, if any of them were left there, in which case, had it been written by him, the handwriting would be known. Therefore there would be a motive in Arthur Orton for getting it written by somebody else, and not letting it be seen to be in his own handwriting; there could be no such motive for Roger Tichborne doing so.

Next comes the intercourse with Mr. Gibbes, to which I have already fully drawn your attention, so far at least as it bore on the question of the defendant being Roger Tichborne; but there are one or two points which become exceedingly material with reference to the inquiry we are now upon; because, if there are any statements made by the defendant to Mr. Gibbes which point to Arthur Orton, and which are wholly inconsistent with their having been made by Roger Tichborne, of course these become of vital importance. Now the first of them is the statement about his having had St. Vitus's dance, made not only to Mr. Gibbes, but to Mr. Hodson also. Can that be explained on any hypothesis consistent with the defendant being Roger Tichborne, or on any other hypothesis than that of his being Arthur Orton? Roger Tichborne never had St. Vitus's dance, or any nervous affection of a cognate or similar character. Arthur Orton, on the other hand, had St. Vitus's dance; so much so that they sent him abroad, in order that the sea voyage and change of scene and climate might enable him to get the better of it. It is a striking incident, that when Mr. Gibbes comes to talk to him about his deficient education, the defendant explains it by saying, "I had a nervous affection which prevented my learning anything." He describes it, and Mr. Gibbes says that is St. Vitus's dance. "Yes," he says, "that is what they used to call it." The same thing in substance occurs with Mr. Hodson. Can that be reconciled with any hypothesis of identity with Roger Tichborne? It is true it is not conclusive with regard to the defendant. The defendant may have had St. Vitus's dance and not be Arthur Orton, but when we come to couple it with so many facts and circumstances which point the same way, it becomes a significant thing indeed.

Then we come to the Wagga-Wagga will, and what shall we say as to Jarvis and Allen? Where were those names got from? Out of what memory did they spring? We have discussed that already, and I do not want to occupy time by going over it again. You have before you the explanation of the defendant. You have before you



the theory of his counsel. You can adopt the one or the other as you please; but if you think both of them equally unsatisfactory, then comes the question, how can it be explained on any other than one hypothesis, namely, that the man who named as executors the persons known to Arthur Orton, with whose names Arthur Orton was familiar, but who certainly could not be known to Roger Tichborne, except on the theory the learned counsel suggested—was Arthur Orton and not Roger Tichborne. Again, when he comes to answer the question put to him through the telegraph, of who was his father's agent in this country, we get Hallett, of Bridport, which it has been suggested to you in argument is no other than Hallin, which, by some confusion of recollection, is converted into Hallett. A still more striking thing, and a thing one cannot see one's way out of, is this: when he was called on, with a view to his making the declaration at Sydney, to state in what vessel and at what time he left England, instead of stating the vessel in which Roger Tichborne left, and the time at which Roger Tichborne left, he gives the time at which Arthur Orton left, and a vessel in which Arthur Orton had sailed, and the name of which could never by possibility have been known to Roger Tichborne, unless you believe in the theory that the memory of Arthur Orton had become the memory of the defendant.

The defendant having thus given the name of a ship in which Arthur Orton sailed from South America, and the time when Arthur Orton left England, which is the more probable—that the theory of Dr. Kenealy is the true one, that the recollections of Arthur Orton had become so impressed on the mind of the defendant, that, although Roger Tichborne, he reproduced them when he was asked the name of the ship in which and the time at which he sailed; or that being suddenly asked the name of the ship and the time at which he left England, the name of a vessel in which Arthur Orton had sailed, and the time at which Arthur Orton had left, suggested themselves to the mind of Arthur Orton. It seems to me that you must choose between these alternatives. Unless you can see by what means facts which were within the recollection and knowledge of Arthur Orton—namely, that he had sailed in the 'Jessie Miller,' and left London in November, 1852—unless you can see your way to some satisfactory explanation how these things could come to be impressed on the mind of Roger Tichborne, the question is whether you must not take them to have been the recollections of Arthur Orton, in which case the man who produces those recollections may fairly and legitimately be inferred to have been and to be Arthur Orton.

Before I quit this part of the case, there is one other circumstance to which I ought specially to call your attention, and that is the entry in the pocket-book which belonged to the defendant, which was found in Australia after he left, and in which there are entries unmistakably

in his own handwriting. I read those entries to you on a former occasion. We must not forget that there is an entry which connects the landing of Roger in Australia with Hobart Town, as distinguished from Melbourne. We know perfectly well that Arthur Orton went to Hobart Town in the first instance; and the entry in question would create a suspicion that the intention of the defendant originally was to represent Roger as having gone in the first place to Hobart Town and not as having landed at Melbourne. It is a memorandum or entry in these words, "La Bella. R. C. Tichborne arrived Hobart Town, January 4th, 1854." Is that compatible with the statement afterwards deliberately made by the defendant that Roger Charles Tichborne landed at Melbourne on the 24th of July of that same year 1854? Or does that entry, in your judgment, point to an idea conceived at first of laying the venue, as we should say, of the landing as having been at Hobart Town, but which was afterwards on further consideration changed to Melbourne? If that is what it really meant, then I must say that points very strongly indeed to Arthur Orton; inasmuch as, having landed himself at Hobart Town, Arthur Orton might well have had Hobart Town in his thoughts while he was preparing his statement as to the manner in which he was saved, and where he was landed. And there is another remarkable thing in that pocket-book—the address of Miss Loader, at her place of abode in London; though to be sure the defendant explains that by saying that Arthur Orton gave him this with a view to his making inquiries about Miss Loader. But if that explanation should appear to you unsatisfactory—if you think the inquiries made at Wapping were made on his own account—the entry of the address of Arthur Orton's former sweetheart in the defendant's pocket-book would of course tend strongly to identify him with Arthur Orton.

So the matter stands on the Australian evidence for the prosecution, subject always to any alteration that may be made on your minds by the evidence adduced on the part of the defendant, for the purpose of showing that Arthur Orton and he are two distinct persons. Several witnesses who say they saw Arthur Orton in Australia speak to the appearance of Arthur Orton, and say that the appearance of the defendant does not coincide with it. There are some who say they have seen Arthur Orton and the defendant, passing by the name of Castro, at one and the same time; in which case, of course, they cannot be one and the same individual. Nothing can be clearer than that. But then of those witnesses there are many who differ from what others of the witnesses have said: there are two different descriptions given of Arthur Orton, and it is difficult to reconcile them. One set of witnesses say he was pock-marked, and had a scar, just as you find the witnesses from Wapping saying the same thing; others never

noticed either the pock-marks or the scar, and appear to be speaking of different men. Others are involved in strange contradictions with reference to the time, saying that these two persons were together at a time it is impossible they could have been together. All this requires careful analysis and examination, but, undoubtedly, this part of the defendant's case is entitled to full and careful consideration. If he can show you that Castro and Orton were two separate and distinct persons living at the same time, and that he was then passing as Castro and not as Orton, he rebuts all inferences which may be drawn from circumstances which otherwise might lead you to the conclusion that he is Arthur Orton.

With a view of judging of the testimony, one has in the first place to see what account the defendant has himself given of his intercourse with Arthur Orton, because by that we may test some of the evidence which has been given on this part of the case. He begins by saying in his affidavit that he knew Arthur Orton, and that he was the son of a butcher at Wapping. He says, "I first became acquainted with him in Gippsland, about the year 1855, when I was at the Dargo Station. He entered the employ of Mr. William Foster after I did. The face of the said Arthur Horton was pitted with small-pox. After I left Gippsland I did not see him again for some years. We were both employed by Robert Higgins, of Wagga-Wagga, in the year 1865." That passage is by no means unimportant. You observe, he says that after he left Gippsland he did not see him again for some years. You will find witnesses come forward and say they saw them both together. The interval between his leaving Gippsland and settling at Wagga-Wagga is one of four years. Finally he says, "We were both employed by Robert Higgins, of Wagga-Wagga, in the year 1865." Mr. Giffard, in examining him in chief, when he was dealing with his service at Boisdale and Dargo, asked him, "Did you at any time during this period meet a person by the name of Arthur Orton?—Yes, I did. Q. Where did you first meet Arthur Orton?—On the Boisdale. Q. How long after you had been with Mr. Foster at Boisdale?—I should think it would be close on two years; from eighteen months to two years, I should think." He says Orton was engaged to ride after stock, and rode pretty fairly as an ordinary rider. He describes him as follows:—"He was a rather sharp-featured and very large-boned man. LORD CHIEF JUSTICE BOVILL: What features?—Rather sharp; he had a lengthy face. Q. What face?—A kind of a long face. Mr. GIFFARD: Anything about his personal appearance that was remarkable? Had his face any marks on it?"—Now if there had been a scar one would think the question would have elicited an answer as to the scar. The only answer is—"He was slightly marked with small-pox. Q. Do you say slightly?—



Yes, it was quite distinguishable. *Q.* Have you seen his arms bare?—Well, no doubt I have, but I cannot say positively. *Q.* Do you remember any marks on his arm?—No, I cannot speak with regard to marks myself, because I do not remember them. *Q.* Was there anything remarkable about his eyes? Were they big or little, or what were they?—They were always very red. *Q.* Are you able to give any description of his size?—No. *Q.* What was his height?—He was taller than I am; I do not know what; I should think he was an inch and a-half taller than I am. *Q.* After you had been to Boisdale, did you go to Dargo to take charge of the station?—I did; it was whilst I was at Dargo I met him. *Q.* It was while you were at Dargo you met Arthur Orton?—That is to say, on an occasion when I came down to Boisdale from Dargo. *Q.* At that time were you in charge of the Dargo Station?—I was in charge; I only came down to Boisdale on a visit. *Q.* It was on a visit from Dargo to Boisdale you met Arthur Orton?—Yes. *Q.* Before we leave the description of Arthur Orton, do you remember anything about his hands and feet?—No, not more than that he had very large hands and feet; very bony hands. *Q.* Did you become intimate with Arthur Orton?—Yes. *Q.* Were you working together during any part of the time?—I saw a good deal of him when he went to live at Dargo; he succeeded me at Dargo.” That would be after the defendant left the service at Boisdale, because, living at Dargo, he could not see much of Orton if he was at Boisdale, therefore it must have been after he left. “Did you know Arthur Orton passing under any other name besides his own of ‘Arthur Orton’?—Yes, of later years. *Q.* What was the name he passed under?—Smith, Alfred Smith. *Q.* I think you say you remained with Foster till 1857, about that?—Yes. **LORD CHIEF JUSTICE BOVILL:** You say ‘of later years.’ Was there a time when he took the name of ‘Alfred Smith’?—Yes, my Lord, in 1866. **MR. GIFFARD:** At the time you were living in this hut at Nicholson’s, as I understand, you were still with Foster?—Still with Foster. *Q.* You left Mr. Foster, I understand, about the end of 1857?—Yes.”—Afterwards, on cross-examination, he says Arthur Orton was at Wagga-Wagga when he finally left—“I saw him the day before I left. I cannot tell you what day it was without referring to a note. **MR. GIFFARD:** But about will do. The **SOLICITOR-GENERAL:** If he has a note. **MR. GIFFARD:** No; my Lord asked him ‘about’?—It was the commencement of June, 1866. **LORD CHIEF JUSTICE BOVILL:** The reason of my asking the date was, you say Orton, in later years, passed by another name—as Alfred Smith, you say, in 1866? Now, can you give us any date in 1866 at which he changed his name from Orton to Smith?—I cannot give you when he changed it. *Q.* You say he was with you when you finally

left? Tell us what name he was passing by?—He went by that name in 1866. Q. What name?—Alfred Smith. Q. He was then passing by the name of Alfred Smith when you left?—Yes. A JUROR: When you left the city?—No, Wagga-Wagga. The LORD CHIEF JUSTICE: Could you tell us how long he had passed by that name when you left about June, 1866?—I could not tell you how long he was going under that name, and I don't think I asked him. Mr. GIFFARD: When did you first know him passing under that name?—It was there"—that is at Wagga-Wagga. "Q. But when first did you know him pass under the name of Alfred Smith? Was it in 1866 or before 1866?—No, I think it was '62. The LORD CHIEF JUSTICE: Now, you say you think it was 1862 he took the name?—I don't think he took it before; I think that was the first time I heard him go by that name." That fixes it in 1862. "Q. Do you know at all, except by hearing him pass by that name, when he first took the name?—No, I do not; but I think it must have been on the Lockland. Q. That is the river?—Yes. Q. Were you at the Lockland river?—I have been there, but I was not there with him. Q. If you will just explain, why do you suppose he took the name for the first time at Lockland river?—Well, he left me, in 1859, at Deniliquin. Q. Where is Deniliquin?—On the River Edward, New South Wales. Q. When he left you, by what name was he passing then?—By his own. Q. By his own name of Arthur Orton?—Yes. Q. When did you next see him after that?—I met him on the Boree; he had just crossed the plains from the Lockland. Q. When you saw him on that occasion was he going by the name of Arthur Orton, or any other name?—No; he then told me he was going by the name of Smith. He remained at Boree five or six days with me; and as I was going to Wagga-Wagga, we both went up together. Q. What became of him then, and what became of you?—I was there for about three days, I think, He went one way, and I went another." Then the Foreman asks this question: "The jury wish this question put to the witness, my Lord; whether Arthur Orton, *alias* Smith, was at any time in the employ of Higgins. LORD CHIEF JUSTICE BOVILL: Will you be kind enough to answer that?—Yes; he was some short time, but not in the same establishment. Mr. GIFFARD: In the employ, but not in the same establishment?—Nothing to do with it. The LORD CHIEF JUSTICE: Will you just state the different establishments? Perhaps you would like to hear that to complete it, gentlemen?—I believe he was employed for a short time in the yard, in the stables of the hotel." It appears that Higgins was the proprietor of the hotel as well as a butcher.

The cross-examination does not, I think, vary it much. He says he met Arthur Orton first at Boisdale, for three days at the be-

ginning of 1856. That we know was impossible, because Arthur Orton, as we find from the books, did not go into the service until the end of 1856. Then he says, "I met him off and on about 18 or 19 months, I think. Q. That would be then during 1855 or 1856, or getting into 1857?—Yes, I think it was fully 1857. Q. Fully into 1857: Very well: You met him on and off during that period of time. When did you next meet him?—I think it was 1858. Q. Where was that?—It was at a little place called Stratford, on the Avon River. Q. In what part of Australia is Stratford-on-Avon? What is the country called?—Gippsland. Q. How long were you in his company then? Of course, I do not mean to a day or night, but how long were you in habits of intercourse with him?—I am just remembering. I think he was with me constantly up to the latter end of 1859. Q. At or near Stratford-upon-Avon?—No, across the country. Q. Across the country, do you say?—Yes. Q. Where did you go to? Where did you and he cross the country?—We crossed over to Beechworth. Q. Still in Gippsland, or in some other country?—No, that is across the mountains. Q. But in what country?—Victoria. Q. Has that district got any name?—The Avon district. Q. You say that was up to the beginning of 1859?—The end of 1859. Q. Where did you meet him next?—He never left my company, I tell you, only for a short time, the whole time. Q. When did you meet him next, after the end of 1859, when you were with him at Beechworth?—On the Murrumbidgee River. Q. The Murrumbidgee is a longish river?—Yes. Q. Whereabouts on the Murrumbidgee River?—At a place called Boree. Q. When was it you met him at Boree, on the Murrumbidgee?—The latter end of 1861, I think, or the commencement of 1862, I could not say which. Q. Then, from the end of 1859 to the latter end of 1861, or the beginning of 1862, you did not see him. Is that so?—Yes. Q. You met him at Boree in the latter end of 1861, or the beginning of 1862, on the Murrumbidgee; how long were you with him then?—Well, he stopped with me, I think, four or five days, and then went with me up to Wagga-Wagga. Q. How long did he stay with you at Wagga-Wagga?—Five or six days, I think. Q. And then went away?—Yes. Q. Up to this time had he gone by the name of Arthur Orton?—Yes. Q. Where did you next see him, or when?—About four months after that; four or five months. Q. This is the end of 1861, or the beginning of 1862?—In 1862, I think. Q. You saw him then four or five months after that; were you still in Wagga-Wagga?—Yes, I was in Wagga-Wagga; at least, just living outside the town. Q. And you saw him, did you?—Yes. Q. How long did you stay with him then?—I saw him in the town that night, and he went out with me, and I think he stopped the next



day with me, and then we went up to Gundagai. *Q.* How long did you stay with him, or he with you? How long were you together?—He left me from Gundagai, I think. Yes. *Q.* This was in 1862?—In 1862. **LORD CHIEF JUSTICE BOVILL:** How long were you there together was the question?—I think going to Gundagai, from the time we left Wagga-Wagga, we were about ten days. **THE SOLICITOR-GENERAL:** And when did you next see him?—I did not see him again until 1866, I think. *Q.* Where did you see him in 1866?—In Wagga-Wagga. *Q.* At this last place you mentioned, at Gundagai, was he still going by the name of Arthur Orton?—At Gundagai, yes. *Q.* Then you did not see him from that time, which was some time or other in 1862, till 1866?—1866. *Q.* And then you saw him at Wagga-Wagga?—At Wagga-Wagga. *Q.* How long were you with him at Wagga-Wagga in 1866?—I saw him on two occasions then; I think the first time for about three days, and the second time three or four days, or five days. *Q.* At what interval?—Four to five months, I think. *Q.* You saw him twice in the course of the year 1866, with an interval of four or five months between; the first time for three or four days, and the second for five or six. Is that what you say?—Yes. *Q.* What name was he going by then?—Going by the name of Alfred Smith. *Q.* When was the last time you saw him?—I think it was the 1st of June, 1866." Then he says he had a conversation with him. "*Q.* What did you talk about?—I am sure I could not tell you what we talked about. *Q.* Can't you remember—I do not expect the details of it—but can't you remember the heads of conversation, the subjects you discussed with him?—If I did, I don't think I should inform you. *Q.* Why not?—In the first place I don't remember what it was. *Q.* That is no answer to my question. You say, if you did remember, you should not inform me: why not?—I do not remember what the conversation was. *Q.* That is no answer to my question, because you say if you did remember you should not inform me?—Well, I do not see what my conversation with another person has to do with you. *Q.* Because you don't think the conversation you have with another person has to do with me, that is the reason you give?—Yes. *Q.* And that is the truth, is it?—Yes; it is nothing to do with you. It is nothing bearing on the case. *Q.* Is that the reason why you would not tell me?—Yes, I believe it is the reason. *Q.* You parted from him, and you don't think what passed between you and him has anything to do with me, therefore, if you knew it, you would not tell me. Have you ever communicated with him since?—No, I have not. *Q.* Never?—No. *Q.* Directly or indirectly?—I have written to him. *Q.* You have written to him?—Yes. *Q.* That is something like a communication: Written to him, have you? Where did you direct to

him?—I directed to him at Wagga-Wagga, to the care of a friend.

*Q.* Alfred Smith, care of a friend at Wagga-Wagga. Who was the friend?—You seem to be very fond of answering my questions for me: I wish you would let me do it myself. I told you I wrote to him, and sent the letter to him enclosed to a friend. *Q.* Who was the friend?—Why should I tell you who he was? *Q.* Who was the friend?—Well, I don't know in the first place whether I am bound to answer the question. **LORD CHIEF JUSTICE BOVILL:** If you appeal to me I think you are. **The WITNESS:** Am I bound to answer it, my Lord? **The LORD CHIEF JUSTICE:** Certainly. I don't see any reason why you should not. **The SOLICITOR-GENERAL:** Who was the friend?—Joseph Robins. *Q.* Who is Joseph Robins?

—He is a wheelwright who lives in Wagga-Wagga. *Q.* Has he anything to do with Orton?—He knows him very well; yes. *Q.* Has he lived long in Wagga-Wagga?—No, not very long. *Q.* How long?—Do you mean up to the present time? *Q.* Yes. When did you first know Joseph Robins, the wheelwright of Wagga-Wagga?—I knew him long before he came to Wagga-Wagga. *Q.* When did he come to Wagga-Wagga?—He came to Wagga-Wagga, I think, about 1863 or 1864.” Then he says the communication was to induce Arthur Orton to come over, but that he never received any answer either from Robins or from him.

Then comes the question, “Do you know why Arthur Orton went by the name of Alfred Smith?—Yes, I do. *Q.* Why?—I don't think I have a right to answer that question. **The LORD CHIEF JUSTICE:** Why not? **The SOLICITOR-GENERAL:** Why?—I suppose because he had done something which did not conform to law. *Q.* What sort of thing had he done that did not conform to the law?—I don't see why I should answer; I was not there when he did it. *Q.* Eh?—I was not there when he changed his name. *Q.* But you knew it; he may have said so to you.” Then comes an objection from Serjeant Ballantine, which objection he afterwards withdraws.

“**The SOLICITOR-GENERAL:** Now, what was it that he did contrary to law which made him change his name?—I don't think I have a right: What he told me in confidence, and as it might affect his character, I don't think I have any right to tell you. *Q.* It is on Arthur Orton's account you object?—Entirely. *Q.* You have no objection on your own account?—No, not as regards why he changed his name. *Q.* Did it make any difference in your feeling towards him?—Not a bit. *Q.* You are not Arthur Orton?—Certainly not. *Q.* Then the question I am about to ask you, please to understand, has no relation whatever to you: Was Arthur Orton ever accused of horse-stealing?—I do not see why I should answer that question. **LORD CHIEF JUSTICE BOVILL:** Why not? **The SOLICITOR-GENERAL:** Why not?—Well, yes, he was accused of horse-stealing.” That he

says was in 1859, or 1860; it might be in that year. “ Q. You told me Arthur Orton was charged with horse-stealing?—I did. Q.\* Were you ever charged with that?—I was charged with him. I may as well add this, that we proved them to be our own horses, and we got discharged.” That he says was at Castlemaine, twelve or fifteen miles from the Back Creek, on the road from Melbourne to Bendigo. Then he is asked, “ Were you at that time in the employ of a man of the name of McManus?—No; I was never employed by a man of the name of McManus. Q. Did you know such a person?—Personally, no.” Thus it turns out that, according to his account, he and this man, Arthur Orton, were charged with horse-stealing; but he says they proved the horses to be their own, and were discharged.

Then there is another inquiry put to him with reference to some matter which he declines to answer lest it might criminate himself, and it is on that occasion that it comes out that he is aware Arthur Orton was a bushranger, or at all events was accused of bushranging; and he tells us what bushranging is, that it is an occupation which would be called being a highwayman here. Then he is asked whether he was charged with the same offence that Arthur Orton was charged with, and he declines to answer, on the ground that his answer might have a tendency to criminate himself, and the Solicitor-General says, “ Do not answer this without considering; and at the same time and conjointly with Arthur Orton?—I decline to answer the question.”

Now up to this time, the defendant had represented that in 1865 he and Arthur Orton were both in the employ of Higgins, though in different parts of his establishment; and the question again came up with reference to the Richardson letter of the 13th of April, 1865, in which the defendant makes inquiry after Orton and his son Arthur. The defendant is then reminded that in his affidavit of June, 1868, he had sworn that he and Arthur Orton had been in Higgins’s employ in 1865. He qualifies that. The affidavit is read, and he is asked if that is true. “ Yes; I should think that was true; I cannot speak to a month. Q. This is a year, you know. When you left Wagga-Wagga, you say you saw him a fortnight before you left?—A fortnight before I left. Q. That was in June, 1866, or thereabouts; it is merely a mistake of the year?—Yes.” He had said it was in 1865; he now changes it and says it was in 1866. “ Q. Why did you swear it was 1865?—Is it possible you can assert to a year by memory? Q. You were swearing in 1868 here?—I was swearing to the best of my memory, certainly. Q. Twice, in two distinct affidavits, in the month of June, 1868, that you had known him in 1855, and again in 1865?—Yes; that is right.” Now he says, although that was right as he thought, yet he had made a mistake.



Then Lord Chief Justice BOVILL says, "I understand you to have said that you did not see him from the time the letter was written on the 13th of April, 1865"—that is the Richardson letter—"until within about a fortnight or thereabouts before you left Wagga-Wagga for Sydney?—About that; he came over with a lot of cattle from the Lockland for Mr. Higgins. Q. If that was in 1865, and before the 13th of April, what was the meaning of this letter in which you made inquiries about Orton?"—That is, you see, the pinch of it. He had said he was in the employment of Higgins, with Orton, in 1865, and this Richardson letter he explained by saying it was written with a view of getting information on the subject of Arthur Orton. Then it is put to him—"You and he were both in the same employment in 1865; you could have had no such necessity of knowing about him, when you were in the same employment:" thereupon he gives the date as 1866, saying he had made a mistake as to its being 1865. That is the substance of it. It ranges over a long series of questions and answers. I do not know that it is worth while to trouble you with them in detail. It ends in this, that he says he last saw Arthur Orton in the year 1866, just about the time he was making the Wagga-Wagga will, and that Arthur Orton left Wagga-Wagga after that, and was going back to Albury, the place of his then residence. The dates which he gives of having seen Arthur Orton, and Arthur Orton's change of name, are important only in one way: that is, they will serve us to control the evidence of the different witnesses who were called for the purpose of proving that Castro and Orton were two separate and distinct individuals.

Now, I must briefly call your attention to what these witnesses say, because it is but fair and just to the defendant that the evidence should be duly attended to. The witnesses are called, as I said, for the purpose of showing that Arthur Orton is not the defendant, and the defendant is not Arthur Orton; and many of them profess to have seen the two persons together, and, therefore, to be able to speak conclusively as to their not being one and the same. The first witness is a person of the name of Barclay. He says he is a canvasser for the 'London Directory.' He went to Australia in the November of 1849, in the 'Stag.' He arrived at Melbourne in February, 1850, stayed there a short time, and went up the country to Billybond Creek, beyond the Edward River. Afterwards he went to the Bendigo Diggings, at the end of 1852. He says he remained there eight years, which brings us to 1860. He says: "I was at Bendigo, at the latter end of 1853. I had two men of the name of Page and Masters with me. I saw there a man named Arthur Orton. He was a young, full, loose-made fellow. He had the appearance of a sailor; he was five feet nine and a-half or ten inches in height; his features were rather coarse, to the best of my memory—it is a long

time ago. He was rather bare-faced, he might have had a slight moustache. He had nothing on his face, that I remarked. He was not marked with the small-pox." There we have one of the strange contradictions; whereas witnesses were called from Wapping to prove Arthur Orton had the small-pox, and other witnesses from Australia say the same, here is a man who declares he saw Arthur Orton at Bendigo at the end of 1853, and he says he had a face with no marks of small-pox or of anything else. "He had ear-rings, which made me think him a sailor, rather high cheek bones, a very coarse appearance—face rather full; no peculiarity in his upper lip; hand rather large. There was nothing about his walk that I remember." The witness was a butcher, and as a butcher he had a stand, and he sold his stand to his two men, Page and Masters, and Arthur Orton took a share with them. That was at the beginning of 1854. He says Arthur understood butchering, and he saw him there butchering on and off about two months. The difficulty of all that is this. It strikes one at once. He fixes the date of it in 1853-54. Now Arthur Orton arrived at Hobart Town in the spring of 1853, and, according to the account given by Mr. Hawkes and Mrs. Mina Jury, he did not leave it until the middle of 1855. If this man is really speaking the truth, in saying that he saw a person of the name of Arthur Orton at the end of 1853, or the beginning of 1854, he must be speaking of some other man bearing that name. That Arthur Orton was in Hobart Town in March, 1854, is clear, because there is a letter from him of the 31st of March to his sister in London; therefore he could not by any possibility have been at Bendigo at that time. That he was at Hobart Town in May, 1855, is equally clear, because we have his promissory note given to the Juries in that month.

The next witness is Joseph Woodyatt, who went out in 1854. He landed at Melbourne in June, went to Flemington in the immediate neighbourhood of Melbourne—a few miles from Melbourne; kept a truck shop for one Pearce, of Essington, a butcher at Keilor Plains, ten miles from Melbourne, for nine months, and he frequented the stockyards there. He says he saw there a man of the name of Arthur Orton, and he fixes the time for this as in July, 1856. He says he was a tall, awkward-built man, of about five feet ten inches. He saw him once only, when he brought what he calls a "mob" of cattle, which was, he says, in December, 1856. He had large hands and feet, his face was thin, with high cheek bones and not much hair; he noticed nothing about the face, and it was only the hands that struck him. Afterwards he sees him in the public-house in the evening, where he was in company with him a greater part of the evening. He saw him again in Carnegian Diggings in November, 1858, thirty miles west of Ballarat, which is about one hundred miles

from Boisdale. Saw him cutting up meat for one Muir, who kept a shop there. Muir called him Arthur and Orton. The witness entered Muir's service, and he gives us a curious account of Orton. He found him in the company of men who went by the name of "rowdies"—"men," he says, "who would plunder anyone they could." He says, "Muir lost his horse; the horse and Orton disappeared together. I had tethered the horse at the back of Muir's tent. I was two days in the bush looking for it. I found neither it nor Orton." Having this knowledge of Orton, he pronounces that the defendant is not Orton—"if he is, he is very much altered; he is not a bit like him." He saw the defendant six months ago at the Manchester Music Hall; he had not any interview with him there, but he is satisfied he is not the man. "Orton's hair," he says, "was a good deal lighter. He was a big-boned man, with a thin, long face; no fatter than I am; not much flesh on him—not over fat nor over thin; a big, muscular man. It was in the stockyard at Flemington that I first saw Orton, before I went to Essington, that must be somewhere in July, 1856. I saw him only once there. Pearce knew him and knew my brother. I heard his name called in the public-house several times. He was well known there. Pearce and two or three more called him sometimes Arthur, sometimes Orton, and asked him to pay for glasses round. Eight or ten persons were present." Now, July, 1856, is not at all an impossible date, because Arthur Orton had left Hobart Town in the August of 1855, and he did not go into the service at Boisdale until December, 1856. Therefore, if the witness is speaking of July, 1856, it is perfectly possible he did meet Arthur Orton as he described. If so, having had an opportunity of becoming acquainted with the man's appearance, he is a man to be listened to when he says the defendant is not the man. With regard to his having seen him in November, 1858, there is this difficulty. Arthur Orton left Boisdale in October, 1858. The submission to arbitration was signed in November, 1858, and he did not leave that neighbourhood finally until the ensuing month of January, if he left it at all; his statement is that he stayed at Sale breaking horses for three or four months. Therefore it would be difficult to suppose he could have gone 100 miles and stayed there in November. At the same time, as I have more than once said, one must always make allowances as to dates, after so many years.

The next witness is George Jones, a carpenter, who gives remarkable evidence. He says he was in Australia at the end of September or the beginning of October, 1854, and was there in 1855, and part of 1856. He knew Foster, and thinks his name was William. He was in his employ, he says, at Boisdale, about a month, as carpenter, in 1856, about November—the warm weather. He says he became acquainted, while in Foster's employ, with a man who passed under



the name of Castro, and he says the defendant is that man. He also became acquainted at Boisdale with a man of the name of Arthur Orton. They were both in Foster's employ at Boisdale at the same time—both stock-driving, and Orton slaughtering, and they were both there the whole time that he was at Boisdale. Now that statement is involved in very great difficulty, and for this reason: The defendant's account of it is, that he, having been at Boisdale, went to Dargo, and while he was at Dargo, Arthur Orton was taken into the employment at Boisdale. When he came down once upon a visit at Boisdale, he found Arthur Orton there, and saw him for two or three days. Then he says he went back to Dargo, and when he finally quitted Dargo, and returned to Boisdale, Arthur Orton, who had previously been at Boisdale, was transferred to Dargo. According to this witness they were both at Boisdale at the same time. He says he saw Arthur, in addition to stock-driving, slaughtering and doing business there, both men being there at the same time. The truth of the story must be tested by this, do you believe Castro was there at all? If Mrs. McAlister and the books satisfy you that the defendant never was there at all as Castro, the man who comes and tells you he saw him, as Castro, and Orton there, as separate persons, of course will not receive belief at your hands, especially when it turns out that his statement and that of the defendant are inconsistent, the defendant having represented, not that he and Orton were employed at the same time at Boisdale, but that they succeeded one another; that when he was at Dargo Arthur Orton was at Boisdale, and when he went back to Boisdale Arthur Orton was transferred to Dargo. Then the witness says that in 1858 Castro was selling horses at Sale. That is perfectly true. Whether he passed by the name of Castro or not at that time, he did, according to his own account, take to the horse-breaking and horse-dealing business after his suit had been determined. It is perfectly possible that this witness, George Jones, bought, as he says, a horse of him, and that would account for the conversation which he says took place between him and the defendant. He asked the defendant if he recollected him, and he said "No." Then he says, "I was the carpenter doing the work at Boisdale while you were there." Says the defendant, "If you are the man who was the carpenter at Boisdale, doing the work when I was there, you are the man I sold a horse to; but it was not a horse, but a grey mare." The witness says that was perfectly right, it was a grey mare. If Arthur Orton was selling horses at Sale, he may very well have sold one to this witness. Then the witness says, "After leaving Sale, I went to Reedy Creek, near Kilmore. I met Orton there in the beginning of 1859; he was in the service of an Irish gentleman, a butcher of the name of McManus. I was there three months. Orton was there all that time, and I had conversations with him. Defendant is not Orton. Orton was a large-

limbed man, with large features—awkward gait in walking, thick lips, large hands and feet, light hair—taller than Castro, I suppose. There is no resemblance between him and Castro.” The witness saw the defendant at a public meeting in 1872, but did not recognize him at first. He says, “I had heard about him; there was great excitement. I may have read—I think I had—that he was said to be Arthur Orton, and that he had passed as Castro at Wagga-Wagga. I wrote to Serjeant Ballantine, to no one else. I recognized the defendant on the platform by his voice and general appearance as Castro.” Then he is asked a pinching question: “You say you were at this time at Boisdale doing the carpentering work; was Mr. Foster a married man?” and he says “I suppose he was, because I saw his wife afterwards, but his wife was not there then; I saw her with Mr. Foster at Sale after I left Boisdale, but while I was there I never saw her. That would tend rather to shake his statement about the dates, because though Mrs. McAlister tells us she was absent for a time, she went away in the month of January or February, 1857, and did not come back till the end of that year or the beginning of the next. Therefore it could not be in November, 1856, that this man was employed at Boisdale, and saw those two men there. It could not have been until the ensuing year, at which time, undoubtedly, Arthur Orton was at Dargo, and so was the defendant, according to the defendant’s own account. Then there is another statement by the same witness. He says that in 1857, after leaving Boisdale, he went to Stratford-on-Avon, and five months after he left he saw both these men there; that they came there half a dozen times, riding on horseback, as if they had come from some station. He saw them in an hotel and billiard-room there. Here again a difficulty suggests itself, when he says he saw these two men together at Stratford-on-Avon. Stratford-on-Avon is not so far from Boisdale but that the men employed at Boisdale might be at Stratford-on-Avon on business, and might, when they had done it, have gone to play at the billiard-table. But the difficulty is in seeing how the two men could have been there together, the one being, according to the defendant’s account, employed at Boisdale, and the other employed at Dargo, the distance between the two places being some seventy or eighty miles. Then, early in 1859, he says he saw Orton at Reedy Creek. That is perfectly possible: Orton may have been there.

The next witness is a man of the name of Thomas Trevitt, who went to Australia in 1852, stayed at Adelaide two months, joined a butcher there as partner, and ultimately settled at Sailor’s Gully, Bendigo, and stayed there till the end of 1865, when he came home in the ‘Royal Charter.’ He says, “I became acquainted with Orton at Avoca, in 1856. I think it was in March, 1856”—that is perfectly possible.—“He was a kind of hanger-on to a settler there, who had a

flock of sheep, and I agreed to slaughter them for him for a shilling per head. The settler said he had a butcher with him who would help me, and the butcher agreed to do so and to share the shilling a head. Arthur Orton was the butcher who was with the settler. He agreed to help me, and we were to share the price. He helped to slaughter half a dozen; then he would not do anything more, and went to help at the settler's shop." The witness says they used to converse round the camp fires at night; the man told him that his father was a butcher at Wapping, and that his name was Orton. Then he states a thing which is characteristic of Orton. The settler made Trevitt a present of the shop in which he carried on his business, a portable shop; he gave Orton his tent in order to satisfy him. The witness says, "When I went next day to take possession of the shop, Orton said I should not have it. I took a tomahawk to knock down the poles, and said I would have it. He came behind me and knocked me down on the floor by a blow at the back of the ear. I said I should acquaint the commissioners with what I had heard about him, which was that he had thrown a man off a horse when crossing a river and taken his horse, which he then had grazing there. I went off to the commissioners about two miles off, but I was called back by a friend who said Orton had gone off." He gives a description of this Orton: "He was about five feet ten inches, he had a scar across his cheek"—here we have mention of the scar—"large shoulder bones, large cheek bones, light brown hair, large ears, rather a largish lobe, small wires in his ears." So that the Orton he speaks of had the scar and wires in his ears. "His feet and hands were large, he turned out one foot, he had a slovenly way of walking, a villanous look, a loud, rough voice, and a narrow chest; he used to be called 'Big Arthur,' and he spoke about different salesmen in Newgate Market. I said I knew the Frosts. He said he knew them too. I spoke of Sandiman and Tucker; he did not seem to know anything about them. I asked him principally about Wapping, as I had never been there—he said it was merely a place where boats came up." When cross-examined about the scar, he said the scar was on the right cheek (the Wapping witnesses who spoke about the scar had said the left) in a pretty straight line from his nose to the cheek bones. He does not think it reached half way to the ear. He had very light whiskers, and hairs on his face wherever they would grow—light hair—a slight moustache, whiskers, and hair all up on his chin. His whisker was so light you could see the skin underneath. The scar was healed. I could see it had been a deep wound; you could not look at him without seeing it"—yet there are a number of witnesses who never saw it at all. Then he says, "his hair curled up just round the ends; I have some recollection that Orton said he had been in Australia some years—longer than I had." Then the photograph of



the defendant is shown him, and he says, "I have some idea that I have seen some one like this; it seems to be familiar, but whether I had seen a person or a picture I cannot say. Can't say it reminds me of Orton; it hardly looks tall enough. There is no resemblance between Orton and defendant. I don't see any feature like, or any likeness, except that he might be the same height." As I observed, March, 1856, is by no means an impossible date for having met with Arthur Orton. But the description does not tally with that of the other witnesses who do not speak of the scar. And, again, I observe those who do speak of the scar do not speak of any poek-marks. Perhaps I have said too much in saying March, 1856, is not an impossible date, because my learned brother corrects me, and I think he is right. If Hopwood is right in saying Arthur Orton was a year and nine months in the service of Johnston, or anything approaching to it, inasmuch as he did not leave Hobart Town till the month of August, 1855, in the March of 1856 he would still be in Johnston's employment; in which case this man's statement would fall to the ground.

Then there is a man of the name of William Haydon, a travelling agent for the Prudential Society. All these men are in respectable positions. He left this country for Australia, and arrived, I think, about August, 1854. He says he became acquainted with Arthur Orton in Collingwood Flat at the latter end of 1854. The Flat is two miles from Melbourne. He was there butchering. He was journeyman and slaughterman, he thinks, for Graham and Ware. He met him several times and also at the Club Hotel, Melbourne, at the end of 1854. He saw him once a week for three or four months, and never saw him afterwards. He was five feet ten or more. Light hair; a light complexion; a bony, rough fellow. That date will not do. Unless we suppose (what would be inconsistent with the statement of Mrs. Mina Jury)—that (after giving up his employment with Mr. Johnston the proprietor in Tasmania) Arthur Orton came from the neighbourhood of Melbourne at the end of 1854, and went back again to Hobart Town at the commencement of 1855—because he was undoubtedly at Hobart Town in May, 1855, that being the time that he took the stall in the market, as we know from the promissory note and his letter to the Jurys, both of which were produced—if this witness is speaking of the same man that we are, then it is difficult to suppose that Arthur Orton had left Hobart Town and gone to Melbourne and done business there, and that he afterwards went back again. But it is not impossible. This man says there was no mark on Orton's face. He distinguishes between Orton and Castro, and tells us he saw Castro at the Omeo Diggings at the end of 1858 or 1859, which is inconsistent with the fact of Castro and Orton being one and the same person. He says he met him at the Omeo

Diggings in 1858 or 1859, but he adds this, "I understood he had been stock-keeper for Foster of Gippsland—he passed as Tom Castro; it appeared to be well known that he had been stock-keeper to Foster." Now, if the only person who was in Foster's employment, as Mrs. McAlister says, was Orton, and there was no Castro there, that would tend to identify the man he met with Orton, as the man he met had been in the employment of Foster. If Mrs. McAlister is right, and no Castro was ever in her employ, then though this man may have seen Arthur Orton, who was in her employ, he cannot have seen Castro; it would then look very much as if the person he was speaking of as Castro was in reality Arthur Orton.

Then comes Mrs. Elizabeth Hiscock, who tells a very strange story. She seems to have been an itinerant store-keeper, going about between the diggings, and she says that in August, 1858, she and her party encamped for the night, as they were going from Melbourne to Bendigo, or Bendigo to Melbourne, I am not sure which, at a place called the Black Forest. She says, "Two diggers came up to our camp; the defendant was one; the other man was taller and slimmer. The defendant asked if I would give them a pannikin of tea, as they were very thirsty. One of my party addressed me as Mrs. Hiscock. Thereupon the defendant asked if I was the wife of Mr. Hiscock who formerly kept a boot shop at No. 70, Haymarket"—It strikes one as strange that because a man hears the name of Hiscock pronounced in Australia, it should occur to him that Hiscock, who had kept a shop in the Haymarket, who by the way was not present on this occasion, should have transferred himself and his belongings to Australia, and was carrying on this business by his wife, between Melbourne and Bendigo, as though there were but one Hiscock in the world. "Yes," she says, "I am the wife of Mr. Hiscock, who kept a shop in the Haymarket." He said, "I knew him very well; he once would not allow me to leave my coat with him when I was going to the opera." That is an odd thing for a man to recollect, if he did have occasion to leave his coat when going to the opera; and why should he have wanted to leave his coat? However, it might have been so. There may have been this bootmaker living in the Haymarket, and when the defendant hears the name of Hiscock pronounced, it may have occurred to him that it was the wife of Mr. Hiscock, the bootmaker, at whose shop he had wanted to leave his coat. Still it seems strange. The party passed the night at this encampment; and the witness states that in the morning she said she should tell her husband she had seen a gentleman who knew him, and asked what name she should say? He said "Roger, that is all," and so they went away. She says the two men who were together had nothing with them; they came between seven and eight at night, and went away a little after eight in the morning in the direction towards Melbourne. She read the

report of the trial, and, in consequence, called upon Mr. Hendriks, the attorney for the defendant, and told him the story. She says I saw the defendant pass yesterday; I recognized the voice, having heard him speak on this one occasion. He had then a kind of French accent. I did not notice that yesterday. The two men did not call each other by name. She knew it was 1858, from the death of a Miss Avery who was with her, and who died suddenly a few days after she arrived at Ballarat.

Now, Mr. Hiscock is alive, and, of course, might have been called; and to make this evidence complete, we certainly did need the presence of Mr. Hiscock. If Mr. Hiscock had come and said, "Yes, I did keep a bootmaker's shop in the Haymarket. I knew Roger Tichborne. I had a customer of that name. I remember that once when he was going to the opera he wanted to disembarass himself of his coat, and asked me to take care of it, and I said I would not," it would have tended to strengthen the evidence of his wife. It seems altogether a somewhat unlikely story. It would have been rather an uncivil thing on the part of Mr. Hiscock. I do not know why he should not accommodate his customer and take his coat and keep it for the night; but if Mr. Hiscock had come and told us all this and so identified the "Roger" of his wife's story with the Roger Tichborne he had formerly known, it would have been a valuable piece of evidence. But the conversation of this good woman with two wanderers—two vagrants—who had no luggage or anything with them, who were in want of a cup of tea and something to eat, and she gave it to them, and one of them says, "I knew your husband under such and such circumstances, if you want to tell him whom you met in the bush say, 'Roger,' and he will know who it is," is certainly a "strange story," and would require all the confirmation which the evidence of Mr. Hiscock could give us to lead us to believe that the "Roger"—without a surname—was the "Roger" in whom we are interested.

I fear I am drawing on your patience in going through these witnessess. Yet there is one thing I feel, and I trust you will go along with me in the observation, and it is this:—There are many circumstances which point adversely to the defendant; the strongest part of his case is to be found in the multitude of his witnesses and in the evidence which they give; and it would not be doing him justice if we did not go through the whole of his evidence, so that your last recollection of the evidence may be fresh and strong before you give your verdict; otherwise I should gladly spare myself the trouble of reading the evidence and you the trouble of listening to it; but, in a case of this kind—a criminal trial—I do not think it would be right to conclude an address and summing up of the judge to the jury,



without carefully pointing your attention, as the last thing, to the various facts spoken to in the evidence which the defendant has placed before you.

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## ONE HUNDRED AND EIGHTY-FIRST DAY.

*Wednesday, February 18, 1874.*

The LORD CHIEF JUSTICE: Gentlemen of the Jury,—There are still some of these Australian witnesses for the defence to be dealt with, and I will state the substance of their evidence in as brief a form as is consistent with giving due effect to it.

The next man is James—who calls himself a “sly-grog-seller”—which, I suppose, means a man who dealt in illicit spirits; and he says he met Orton at Friar’s Creek, at the end of 1856, which he afterwards corrects, and says he was wrong, it was in June, 1858. He gives a remarkable description of him. He says he was associating there with a gang of bushrangers and men who lived by plunder. He describes him as having high cheek bones, light hair, and very large hands and feet. He says that he saw him again in that year, four or five months afterwards, at Bullock Creek. His evidence here becomes important, because he says he saw a man called Castro with him at the same time; so that, if his evidence is trustworthy, he shows that they were two distinct men. He says he first saw Castro at Castlemaine, in 1854, coming in with Orton from the bush. But, here again, if Arthur Orton was at Hobart Town, and we know he did not finally leave it till August, 1855, he could not well be associated with Castro at the end of 1854, the two then coming from the bush. He says he saw them both again in 1855 in Melbourne, or Geelong; and that again does not tally with the case of the defendant, because, according to him, at that time he was either at Boisdale or Dargo. Then he says he saw them at Bendigo together in 1858, and that they were then regular bushrangers. He says he associated with these people, and once rode with Orton, Castro, and one Brown to a place seventeen miles from Castlemaine, and that Orton said of the horse he was riding, “This brute cannot jump half as well as those ponies I used to ride at Wapping.” He saw them three times in 1858, and the last time in 1859, at a place called Mount Gambey. There is nothing impossible in the latter date. If they were two distinct people, he might have seen them at that time. He describes Arthur Orton as having what he calls a very rolling, “slommicky” walk; he always used to walk a little wider with one foot than with the other. He is asked whether he had any marks on his face, and he says he had very slight marks. Then my Brother Mellor asks

him where; and he says on the left or the right side; he was slightly pock-marked; and he says his ears were pierced. This is the man who said that when they were sitting in the bush Orton used to pick the leaves of the gum tree and stick them in the holes in his ears, the leaf being extremely small and capable of having the stem passed through a small hole, like the hole which would be made for ear-rings. I have pointed out the discrepancies in point of date, which occur with reference to this evidence; and when you remember that this man was more or less mixed up with the story of Luie, and he is described by himself as a sly-grog-seller, I do not know whether you will consider his evidence worthy of very much attention.

Then there is a man of the name of Edward Stock, who went out as mariner in the brig 'Raven,' which traded from Auckland to Sydney, in 1855. He was at Melbourne, and became one of the gold escort at the end of 1855, and he says Orton and Castro were there together at that time, and he gives a description of Orton as wearing ear-rings, and as being slightly pock-marked, the marks not being visible anywhere but on the forehead. When he was asked what marks this man Orton had on the face he says there was a scar on the left cheek leading from the corner of the eye to the point of the nose. Castro he describes as a different man, not so tall as Orton by an inch or so. Then he is asked what they were doing in 1856, when he was in the gold escort, and he says they were both dealing in cattle; bringing cattle to market, and he believes dealing on their own account. Now, that is an impossible thing, if the defendant's story is true, or if the McAlister story is true, because at the end of 1856 Arthur Orton was in the service at Boisdale; and according to the defendant's account he himself was at that time in the service at Dargo. The witness gives you an account of a circumstance which certainly would be likely to impress the recollection of Arthur Orton on his mind. He says that while in the gold escort he one night heard a noise in the street, and went out to ascertain the cause, and he found Orton there with two or three others, and Orton, on his interfering, struck him with a stick across the nose, of which he bears the mark to this day. Certainly that looks like reality, if he has got hold of the right Orton, the man with whom we have to deal. First he says it was in December that he saw the men together two or three times, but he afterwards puts the date further back, and says he is not sure whether it was October or the beginning of November. You remember the man I dare say in the box, a somewhat flippant witness, and you must judge for yourselves what weight you will attach to his evidence.

There is next a man of the name of Woolnough, who says that from September, 1859, to January, 1861, he was at a place called

Reedy Creek, near Kilmore, and that Arthur Orton was there in the employ of McManus the butcher. There is nothing incompatible there in point of date, so far as I am aware; it is possible he may have seen Arthur Orton. In describing him, he says he has an indistinct remembrance that he had pock-marks on the side of his nose. He says nothing at all about the scar.

Then there is a person of the name of Dyke, who landed at Melbourne in 1859, and went to Wagga-Wagga in 1862, and rented a billiard-room there of Fennel, who was then the proprietor of the Australian Hotel. When he had been at Wagga-Wagga about eight or nine months the barman pointed out a man whom they called "Tom," and whom he afterwards believed to be Castro. He says that man came often to the billiard-room; that he entered into Mr. Higgins's employment, having one Stevenson under him, and remained with him two years. He describes the defendant as Castro. Then he says there was a man named Orton who used to come over with cattle, and says he first came about six or seven months after he (the witness) had been there; that he used to come to the billiard-room, and he saw these men together three or four times in the billiard-room, and also on the race-course, at the time of the races. He describes the men. He says, Orton's voice was rougher than Castro's; he had very prominent features; rather high cheek bones; hair a deal lighter than Castro's; his upper lip seemed to hang over; he was a bony man, neither fat nor thin; he was thinner than Castro, and not more than twelve stone; shoulders not so broad, but he was the taller of the two. Then he says he met Orton after this at Forbes' Diggings, in October or November, 1860, or 1861, and he knew him again. He wore some hair just on the chin, very slight; he was splay-footed; threw one foot out a bit; not in-kneed that he observed. He says he knew him for two months at Forbes' Diggings, shepherding horses for the diggers, a man named Taylor being with him, and that he became well acquainted with the man. He next sees him at Wagga-Wagga, and knew he was Arthur Orton by his giving him an I O U for 3*l.*, in which he had become indebted to him, partly for billiard playing, and partly for money lent, and that Orton paid that to him at the latter end of the year 1864, so that he knows the man, he says, perfectly. He never noticed any twitching. Now the difficulty with regard to this man's evidence is, that he says he knew him in 1864 by the name of Orton, while according to the defendant's account, Orton at that time, and as far back as 1862, had sunk the name of Orton altogether, and was going by the name of Alfred Smith.

Then there is Benjamin Ward. He landed in Melbourne in 1857, got to Myrtle Creek, he says, at the end of 1859, and was there for three years, to the end of 1862. Orton was there as a stock-rider, in the employment of a person of the name of Johnson,



and also of a person named O'Brien. He gives a description of him: "He was five feet nine in height, and had a light amber or ginger complexion, or something like that; his hair was lighter than his beard and moustache. He used to wear a billygoat beard. He was a square-built sort of a man; not fat; with no superfluous flesh; a muscular, big-boned man; not in-kneed; with no peculiarity in his walk. He never saw any twitching; cannot speak to any scar; he was slightly marked with small-pox; he had a blotchy, rough chin; the cheek bones stood out decidedly; he had an oval face, and very large hands and feet." That is his description of him. The last time he saw him, he says, was at Macartney Station, eight miles from Myrtle Ford, on the 6th of February, 1863; he remembers the date, two days after his birthday. He had a conversation with him about the murder of Ballarat Harry, which this witness says had happened just before. But if Mrs. McAllister is right, Ballarat Harry was murdered during the time Arthur Orton was in her service, and it was owing to the sensation this produced that he would not stay any longer there, and came over from Dargo on Roan Tommy to Boisdale; so that if she is right, this man is altogether out. Then, the defendant having said that Arthur Orton was in 1862 called Alfred Smith, this man who saw him in 1863, is asked whether he knew that he went by the name of Alfred Smith, and he says he did not.

Next, there is Robert Gardiner, who says that he was at Wagga-Wagga, first in 1853, and again in 1867; and he saw Orton at a place called Brooking, sixty miles from Wagga-Wagga, in 1863, when Orton was on his way to Wagga-Wagga, and again in January, 1865. Then he gives a description of him, that he was a big-framed, raw-boned man, not fleshy; eyes a little sunk in; not particularly knock-kneed; never noticed any twitching, or shambling way of walking. He says he knew Castro at Wagga-Wagga, by seeing him in Higgins's shop; he was not like Orton. He knew him up to the time he left Wagga-Wagga, and he saw him a few days before he left for England standing at the bar of Higgins's hotel. He says the two are not the same, but two separate persons; Orton was a trifle taller; Castro had darker hair; Orton was a rough-looking man, with rather a straggling beard of a foxey colour. Castro's hands were white; he had a sleepy look; he was not like Orton in the face. He saw them both, off and on, in 1865, for seven or eight months. He does not appear to know that Orton went by the name of Alfred Smith, as the defendant stated. He first saw Arthur Orton at the diggings at Castlemaine, as near as he recollects, in 1857, but did not then know his name; he first learnt his name at Brooking. Here again that date is impossible, because Arthur Orton, in 1857, was either at Boisdale or Dargo, according

to the time of the year it was. He says that he was loafing about, and people thought he was not after much good, nor any of the party he was with. He never heard that Orton was called Smith. He saw no marks about his face, no scar, no ear-rings.

There is another witness named Pole. He was at Melbourne in 1866, and he says he met Orton at the Gap, at the end of November, or the beginning of December, 1866. This is the only witness who speaks of having seen Orton after the defendant left Australia. He says he met him at the Gap, which is on the road between Melbourne and Bendigo, at the end of November, or the beginning of December. He describes him as a full, raw-boned man, with prominent features; his upper lip projecting a little more than usual; with hair a shade lighter than that of the witness, which was a medium brown; he had large hands and feet—a scar on the left hand, between the thumb and the fore-finger; a light scar down the left cheek, just discernible. He describes it as going from the cheek-bone to the upper part of the mouth. He says he noticed his ears were pierced. He and Orton were ten days together. This man, you will remember, gave a remarkable account, and not a very pleasant one to repeat or to listen to, of his journey with Arthur Orton. This is the man who did the kind service to Arthur Orton which Arthur Orton returned to him, and which consisted of disencumbering his person, as far as he could, of certain disagreeable parasites which had got possession of both of them. He says they had but one comb between them, which was Arthur Orton's, and had "A. O." rudely carved upon it. They were on what he called the "Wallaby Track," that is, wandering about as two vagrants on the tramp to pick up a job, or anything else that came in their way—that being, as I apprehend, what is meant by being "on the Wallaby Track." If you believe that Arthur Orton was in the flesh in Australia after the defendant left there, this is the only witness who speaks to him, for there is no evidence of his being there, with the exception of what this man tells us in this way of what happened when they were on the "Wallaby Track" in the latter part of 1866.

That, Gentlemen, concludes the Australian evidence; and it certainly seems in some respects to point to two different persons. If you can trust the evidence, there would be an end of the case against the defendant, as relates to his being Arthur Orton, because there are several witnesses who say Castro was known to them as a distinct person, and that Orton was also known as another distinct person, and, if this be true, of course they could not be the same men. But one cannot help being struck with the difference there appears to be in the description which some of these witnesses give, from that which is given by several others, to say nothing of the discrepancies in point of time. Some speak of a scar and pock-marks; others of a smooth face without either scar or pock-marks; some of one only

of the two things. It is difficult to reconcile the two accounts. Whether there was in Australia a second Orton, and that it is with this man some of the witnesses have fallen in, it is difficult to say. It is said that they do make free with one another's names out there in the back woods; and what is not satisfactory to my mind is, that the other Ortons who have gone from this country have not come back since, and we have had no account of them; and whether some of these things of which the witnesses have spoken may apply to either of them, I am sure I do not know. In the case of the Wapping evidence, many of the witnesses spoke of the unusually large hands and feet of Arthur Orton, whose hands and feet were too large to be identified with the hands and feet of the defendant. Are we quite sure, when we come to look at all the facts of the case, that they are speaking not of Arthur Orton, but of one of his brothers? There was another brother, Edmund, we know, who went to sea, and has never returned. Whether he went to Australia or not, or where he has passed his life since we are not informed. Strange to say, no inquiry seems to have been made on the part of the prosecution either of him or about him; if he ever went to Australia, it is just possible these people are confounding him with the Arthur Orton properly so called. I do not say it is so, but it is one of the modes, if the other facts of the case should lead you to the conclusion that the defendant is Arthur Orton, in which one may solve the difficulty, rather than by supposing those persons come to tell what is not true. However, that is all matter for you to consider. If you think the evidence has established the fact that Arthur Orton was a man, either in point of stature, or in point of limbs, different from the defendant, or had particular marks, or any particular mark not corresponding with those on the defendant, of course they cannot be the same man. You must take it altogether as a whole—the evidence given by these persons as to the individual, and the facts of the case, before you make up your minds whether the defendant is Arthur Orton or not.

We now quit Australia, and we accompany the defendant back to this country. The first remarkable circumstance in this part of the history is what occurs on his coming up the river. We are told by Bromley, the pilot, who brought the 'Cella' up the river, that the defendant came to him and said, "Do you know a pilot of the name of Fergusson?" "Well," says the man, "I know two or three." The defendant takes a turn or two and comes back, and says, "The man I meant was the man who used to pilot the Dundee boats." That, as I before observed, is not likely to have occurred to Roger Tichborne. For, what on earth should Roger Tichborne know or care about Fergusson who used to pilot the Dundee boats? He knew nothing about the Dundee boats or Fergusson either; and, as my



learned Brother suggests to me, it is in the last degree improbable that Arthur Orton would suggest to Roger, if Roger was coming home, to make that inquiry. But if it was Arthur Orton, he, of course, would in all probability have known Fergusson, because Orton was perfectly familiar with the Dundee vessels. I pass on. The defendant comes into London, and then you have that extraordinary visit to Wapping. How stands that? Can we reconcile it with the possibility of the defendant being Roger Tichborne, when we find him so interested in the Orton family that he must go down late at night, the very night he arrives, in hot haste, to ascertain what has become of the Ortons. As I have pointed out, Roger might have undertaken the task of ascertaining what had become of them, and what their position was; but even in that case, if he had conceived the most ardent friendship for Arthur Orton, and hence took the deepest interest in the family, an inquiry the next morning would have abundantly sufficed. And it is not only that, but, if you believe the conversation detailed by the two witnesses, Mrs. Fairhead and Mrs. Jackson, the defendant exhibits the utmost familiarity with places which Roger never saw, and names he never heard of in his life. That that can be reconciled with the supposition that he is Roger Tichborne seems next to impossible. But how is it the other way? Is it consistent with the character of Orton? The learned counsel uses an argument which, at first sight, seems plausible enough. He says, How can it be supposed that Arthur Orton, if he was about to assume the character of another man, would be so insane, as to go to a place where he would be certain to be known as Arthur Orton? Gentlemen, the experience of Courts of Justice tells us that men are every day convicted of crimes by reason of some rash act which a sounder judgment would have told them to avoid, but which, nevertheless, they are, from some motive or other, induced to commit, and which leads to the discovery of what otherwise might have remained concealed and unknown. But is it too outrageous a supposition that Arthur Orton, if he wanted to find out what had become of the Ortons, should go down to that neighbourhood? He goes there late at night, and very likely his only intention was to reconnoitre and see whether old Orton's shop was still in existence; whether the name was still over the door; whether the house was inhabited; whether any of the family were still there. He finds the house shut up. What more natural than to go to the nearest public-house, to try if he could pick up any information touching the people he wanted to know about? The chances were that, after twelve or fourteen years, with the changes that would have taken place during that period, no one would be there who knew him, especially as in all probability no one would dream of seeing one who had gone away as a boy at the age of eighteen, and had not been heard of as a man all that time. With the alteration of his own size and personal appearance, and being well wrapped up,

he may have felt assured he should not be known ; and I see nothing so extraordinary, therefore, in the notion that he may have gone down there, and not finding any one in the house, have walked into the nearest public-house to inquire, and finding two women, have got into conversation in the way we have heard. The learned counsel, sensible of the effect of the evidence, asked you to disbelieve those witnesses. I have already pointed out to you what I have to say about them ; it is your province and yours alone to say what the value of their evidence is. All I say is, if you believe the statements of those two witnesses, and that there was all that conversation about the people who had lived in Wapping in the days of Arthur Orton, and with whom his childhood and boyish recollections were associated, I confess I do not see my way to any other result or conclusion than that, joined to all the other circumstances, all this does point very strongly to identity with Arthur Orton. But it does not rest there. We know what took place the next day. We know that when he found Mary Ann Orton had been married and was a widow, he put himself into communication with her in a mysterious and fictitious form. He writes a letter in the name of Arthur Orton, which he dates from Australia, and passes himself off under the assumed name of Stephens. He has a card of a man of the name of Stephens, whom it appears he met on his passage home from New York ; he adds " Australia " to that card, and writes the letter as from Australia, whereas it must have been written at home—because he refers to Stephens, and therefore must have been written after he became acquainted with Stephens, and therefore could not have been written in Australia, because we know from the defendant's own statement that he never saw Stephens until he met him on his way home. Now, is this letter the letter of Arthur Orton ? It is written in the defendant's handwriting unmistakably. I do not say there was any attempt to conceal it, nor was there any object in writing it in a feigned hand if he desired it to be thought to be a letter of Arthur Orton. On the contrary, the sister, who knew her brother's handwriting, would have known the letter could not be his if it had been written in another hand. But she accepts it as Arthur's writing. That it is his, the " W's " in " Wagga-Wagga," and the " M " in " My dear and beloved Sister " show unmistakably. But there is further another very striking circumstance about this letter. There is what we have called, by a name which is not exactly applicable to it, the hieroglyphic of Arthur Orton. In the former correspondence of Arthur with his sisters and Miss Loader that same sign is attached to his signature, and where he got that from I think is a matter which admits of no doubt, namely, from South America. It is the custom of that country—a custom, as I understand, not peculiar to that country alone, but which is common to Spain and all dominions which have been or are Spanish—to have

what is called in Spanish a "rubrica," a sign which you append to your signature, sometimes consisting of a flourish, sometimes some arbitrary mark which you choose to assume; and in the commercial world in those countries a man's "rubrica" is as effectual as his signature, perhaps more so. Where you have adopted a "rubrica" your banker would not honour your cheque with your signature without that sign, but he would, I am told, if he knows your "rubrica," honour your cheque, or act on your letter which had your "rubrica" though it had not your signature. The word is derived from the Latin, but there it has a different signification. Here it means something added by hand to your signature, your subscription. The account given of it in the Spanish dictionaries is a peculiar mark or flourish added to one's signature. Then there is the verb "rubricar," to sign with one's peculiar mark or flourish without writing the name; so that it is equivalent to your signature. Whatever mark you adopt as your "rubrica" is essential to your signature, or equivalent to it, and would suffice without your signature. The thing is not at all unknown in France, and you will find it in the French dictionary under the word "paraphe," which is an abbreviation of "paragraph," with the same explanation, namely, that it is a sign which you either add to your signature, or which you use without it as equivalent to your signature. There can, therefore, be little doubt that Arthur Orton had in America, where we know he was for some time, assumed this and acquired the habit of using it; for when he writes to Miss Loader, as also when he writes to his sister from Hobart Town, he uses the same thing. In order that there should be no doubt about his handwriting, or about his letters, in writing to them, he adds that sign; and when the defendant writes to Mary Ann Orton in the name of Arthur, he takes care to add this sign; whereas when writing from Australia to others, but not in the character of Arthur Orton, he does not add that appendage to his letters. When he writes to the Dowager, when he writes to Mr. Cubitt, when he writes to any one out there, there is no such addition, but when he writes in the name of Orton he adds it. It is true, it may be said, that if Roger Tichborne can be supposed to have been communicating with Mary Ann Orton in the assumed character of her brother, if he had this intimate acquaintance and frequent association with Arthur Orton, he would know that Orton used this appendage to his signature, and in order to identify the Orton in whose name he was writing with the true Orton, he would add it. That I quite see. On the other hand, it is a striking circumstance, unless you are satisfied of the identity of Castro with Roger Tichborne, that the man who wrote that letter—and certainly it was no other than the defendant—should be aware that Orton used that sign, and therefore appended it to that letter. It is a circumstance not unworthy of attention.



Gentlemen, besides that, we have all the concealment which you know took place in preventing the fact from becoming known that he had gone down to Wapping and had held communication with these members of the Orton family. Not only did he not at any time let any one know of this until the Orton case was sprung upon him, but even when that had been done, instead of openly acknowledging what had taken place, he at first denied it, and said he had never been at Wapping, although it is impossible to suppose that having gone down there on the night of his arrival in this country, and having had correspondence with these people immediately afterwards, he should not, within so short a period of time, have recollected so very remarkable a circumstance. But that is not all. We know he took Charles Orton and the two sisters—at all events one of them—more or less into his pay. Not, indeed, when he first arrived, and when his doing so might have been consistent with what he stated to have been his purpose in seeking them out, but when it became necessary and useful to his cause. When he first came he told the people with whom he then communicated, that his object was to ascertain about the family in order to afford information about them to Arthur Orton, and to render them assistance. He gave no assistance to the family for twelve months or more, until he wanted their assistance. This being so, the question naturally presents itself, why should he have given them money at all? Was it in order to induce them to say he was not their brother? At another time he said he went there for the purpose of ascertaining whether Arthur Orton had arrived. The former statement is, of course, perfectly inconsistent with the notion of Arthur Orton arriving at the same time as himself. Afterwards he stated with reference to Arthur Orton, so far from his having arrived in this country, or being expected to arrive, that he was living in Wagga-Wagga under an assumed name. All these things, obviously, are inconsistent with one another. It would have been satisfactory if the correspondence with this Orton family had been produced; we should have seen then on what footing it proceeded. It has been all destroyed. Was that in order that the footing on which these parties stood to one another should not be known? That may be so; but there is a circumstance connected with this part of the case which it is impossible to pass over without observation. With reference to the Orton part of the case (except as to what took place in Australia) there were three witnesses still living who could have thrown light on this embangled story; there is a brother and there are two sisters of Arthur Orton living, and who might have been called. I could not expect either party to call the brother, Charles Orton. It could not be expected that the defendant should call him, as he had been in communication with the prosecution and had proved traitor to him. When he did not

get the money he had been in the habit of receiving, he went to the opposite party and told the whole story. On the other hand, I could not expect the prosecution to call him, for this plain and simple reason—that it would be inconsistent with the proper conduct of the prosecution to present a witness to the jury whom the counsel producing him could not ask them to believe; and it would be impossible to ask any jury to believe the evidence of a man who had so long had money supplied to him for having stated the very opposite thing, and who would probably have been prepared to continue to state it on oath if the payments had not been withheld. But then the two sisters—what shall be said as to them? They could have told you whether Arthur Orton had a brown mark on his person or not; because one cannot suppose, they being much older than he, that, if as a child he had had a brown mark on his body, those sisters would not have known it; either from seeing it when the child was washed or from hearing of it. It seems next to impossible that they should not have known that. Again, they must have known whether, having had the small-pox, he was marked with it or not. Lastly, they must have known if he had had any wound which left a scar on his face. They could have told you a variety of things which, if their evidence was believed, would have placed this matter beyond doubt one way or the other. Why were they not called? The learned counsel for the Crown certainly could not be expected to call them; they had been in the pay of the defendant, and had made affidavits in his favour. Why were they not called for the defendant? The learned counsel assigned as a reason for not calling them that he believed they had been in communication with the other side—a suggestion for which, so far as we are aware, there is no foundation whatever; there is no proof of it at all. The learned counsel says it is to be inferred because there are things about them known to the other side which would not have been known if they had not been in communication with them. I think there is another and a very simple mode of accounting for this knowledge of things connected with the sisters, and that is that they were in communication with Mr. Holmes, and Mr. Holmes when he parted company with the defendant, and had his character assailed, for his own sake let out all he knew. The learned counsel says, “If I had called those witnesses, and they had shown the least hesitation in saying, ‘He is our brother,’ it would have been fatal to my case.” But why should he assume that there would have been any such hesitation, if these witnesses knew in their consciences that the defendant was not their brother? On the other hand, if these witnesses had been called, and had said, “He is not our brother, and we can give you facts which will show you that he is not our brother”—if they could have done that, their evidence, if believed by you,

would have been of more weight and effect than that of all the witnesses from Wapping adduced on the part of the defendant; and therefore one cannot but suspect that there is some good and sufficient reason for not calling them beyond what the learned counsel has stated to us.

There is another thing to which I have to call attention. Mrs. De Hayley told us in her evidence that she saw on the arm of Arthur Orton two letters marked in blue, a thing she had never seen before, being unacquainted with the process of tattooing, and she asked him what it meant, and he told her it was the initials of his name, Arthur Orton. Mrs. Mina Jury says she saw Arthur Orton one day in Hobart Town, when in the employ of some of the butchers there, running or coming up the street in great haste, with his arms bare, and she saw some mark of tattooing on his arm. Was it there or not? The concurrent testimony of those two witnesses, coming from different parts of the world, may possibly satisfy you that Arthur Orton had that mark on the arm. The two sisters could probably have told us whether it was so or not. Suppose there was that mark on his arm, is there anything in the mark on the arm of the defendant that corresponds with it? The defendant has a mark on his arm and you saw it; I did not. You can form a judgment whether the mark now on the arm would be a mark which would correspond with what the two witnesses, Mrs. Mina Jury and Mrs. De Hayley, represent to have been the mark on Arthur Orton. Strange to say, the defendant cannot tell how that mark came there. It may have been from a boil, from a burn, or from a scald; it may also have come from cauterizing the skin to get rid of an otherwise indelible mark. Now it cannot have been from any of those causes, without the knowledge of the defendant, unless it occurred in infancy. They are all things he would be likely to recollect. But he cannot tell us at what time he first saw it; he cannot connect it with any particular circumstance in his life except one. He broke his arm, he says, in Australia; the arm was tightly bandaged, and it may have been from that cause that this place came on the arm. The eminent surgeon called as a witness for him, Sir William Fergusson, said that such a thing was possible as the result of a tight bandage. I should not have supposed so, but should be very reluctant indeed to oppose any notion of my own to such an authority in a matter peculiarly his own. But even the defendant only gives us that as a matter of supposition. He does not say it was so. We have therefore this mark on the arm not distinctly or satisfactorily accounted for, but only explained on what is a very hypothetical foundation. If you think that mark corresponds with the mark those two witnesses speak of, and as to which, if it did not exist on the arm of Arthur Orton, in all human probability the sisters would have been able to contradict the statement of Mrs. Jury



and Mrs. de Hayley—if you think Arthur Orton had that mark, and you think the mark on the arm of the defendant, which he fails to account for satisfactorily, corresponds with what would have been the “A. O.” and the round mark on Arthur Orton’s arm, this is another circumstance to be taken into account.

The last point, and one which seems to me deserving of great consideration, is this—that from the day the defendant left Australia—if we except the evidence of that one witness, Pole, the man who says he was on the “Wallaby Track” with him—Arthur Orton has entirely disappeared. The defendant says he advertised for him, and he is not to be found. Mr. Spofforth adopted the singular and unusual course, I cannot help thinking, of offering Cater 1,000*l.* to be divided between him and Orton if Orton should be forthcoming. It was an imprudent course. I cannot suppose that Mr. Spofforth intended to do anything so wicked as that we should have a fictitious Orton coming forward; but the offer of 500*l.* to Cater if he could find Orton, and of 500*l.* to Orton if Orton should be found forthcoming, was not unlikely to be attended with the consequences I have just alluded to. Of course that is not what Mr. Spofforth intended. Cater, the baker of Wagga-Wagga, has gone back to Wagga-Wagga, and you may depend upon it, if Arthur Orton could have been found within anything like a practicable distance, Cater would not have lost that 500*l.* reward. Whether he may have departed from Australia, and gone elsewhere, or whether he may have departed this life, I am sure I do not know, but there is the fact, that there is no Arthur Orton forthcoming or to be heard of. It stands thus: in the first place, Arthur Orton is not heard of in Australia until about the period when the defendant represents himself as having arrived there. When the defendant leaves the colony Arthur Orton disappears from it, and has never been heard of since.

Gentlemen, those are all the facts relative to the Orton case that occur to my mind, with the exception of one head of evidence, hereafter to be supplied. I mean the comparison of handwriting. To make the Orton case complete, that comparison should be made now. But I find it will save so much time if, instead of comparing the writing of Arthur Orton and that of the defendant at this stage, and that of the defendant with that of Roger Tichborne at a later stage, I submit to you the comparison of the three handwritings at one and the same time, that for the sake of convenience I postpone that subject for the present. Gentlemen, you will have in all these facts the materials to form an opinion. You will say on the whole—taking the affirmative evidence of Miss Loader and the other witnesses on the one hand, and the negative evidence of the defendant’s witnesses—both from Wapping and Australia—on the other—looking at it by the light which all this mass of facts is calculated to throw on the case—whether in your judgment the

defendant is Arthur Orton or not. Of course, if he is, there is an end of the matter. But the converse of the proposition does not follow. He may not be Arthur Orton, yet it is quite consistent with that that he may not be Roger Tichborne. The position assumed by the learned counsel with reference to that is altogether untenable. He said, if I understood him rightly, that it was the business of the prosecution not merely to show negatively that the defendant was not Roger Tichborne, but to show affirmatively who he was, and that unless they did show who he was, the prosecution fails; and consequently, that if the evidence failed to prove him to be Arthur Orton, the whole case fell to the ground. No proposition could be more untenable. If the prosecution are right in this issue, and he is Arthur Orton, of course he cannot possibly be Roger Tichborne; but to say that because the prosecution may fail to show who he is, he must therefore be taken to be Roger Tichborne, is simply absurd. You may be of opinion that it is doubtful whether he is Arthur Orton or not, and yet in the end you may come to the conclusion on the facts of the case that he cannot be Roger Tichborne.

So much then for the Orton case; and now let us revert to the question with which we originally started—namely, whether the defendant is Roger Tichborne or not. Now, the first part of the case with which I propose to deal relates to the judgment and opinion of persons acquainted with Roger, and who say the defendant is not he. I begin with the family. If you desire to ascertain the identity of a person, you naturally turn to those who have been the longest familiar and intimate with him, and, generally speaking, these would be the members of a man's own family. There has been in this case an attempt made to create a violent prejudice against the family of the Tichbornes as keeping the defendant out of the possession of his estates, they perfectly well knowing that he is Roger Tichborne. And the same thing has been said of the members of the Seymour family—not with reference so much to their having any interest in the matter, as has been said of the Tichborne family, but to other motives of a base and mean character which have been ascribed to them to account for their opposition to the defendant. Now, as regards the family of the Tichbornes, what appeared the other day plain beyond all question, from the settlements and disposition of the property from time to time made, was that they had no pecuniary interest in the world in the result, with the single exception of Lady Radcliffe. She has an interest, because, if Roger's will stands, and the present youthful heir should die before he marries and has children, her second son would take, as you know, under Roger's will, an estate consisting of a considerable portion of the Doughty property. With that exception, all the rest of the

family have no pecuniary interest of any sort. But they have an interest, and, what is more, an interest which ought to have been taken into account, and upon the strength of which credit should have been given to them, not for having entered into a vile, wicked, detestable conspiracy, but for being actuated by an honest desire to do what is right. Every family has an interest in not allowing an impostor to be at its head. Right or wrong the members of this family believe the defendant to be an impostor; it is for you to say whether they are right or mistaken, but that they honestly believe him to be so is, I think, too clear and too plain to be gainsaid by anybody who really brings a right-minded judgment to the consideration of the question. But they have a further duty. They have a duty to the one they believe to be the head of the family; and they owed a duty here to their young kinsman, to see that he was not ousted from his inheritance by a wicked, fraudulent attempt; and if they believed the attempt a wicked and fraudulent one, it was their bounden duty to resist it, and not to allow this child to be sacrificed, as he might have been, if they had not stood forward in his defence. Then, the Seymours, what can be said of them? Of personal interest as regards pecuniary considerations, they have none; but though they have not, as the Tichbornes have, the honour of their family and name to uphold in rendering their aid to protect the young heir, they have the interest of their undoubted kinsman to protect if they believe him to be unjustly assailed, and that duty they were bound to discharge. Whether you should in the end think they are right or wrong in the view they have taken as to the identity of the defendant with Roger, anybody who was not either a fool or a fanatic, or a combination of both, would have given them credit for acting from honest, and not dishonest, motives, and for doing what they believed to be right, instead of seeking, as has been done throughout this country, in a course of systematic agitation, at these public meetings, where popular passion was stimulated by harangues of an inflammatory nature, to attempt to cover them with obloquy and reproach as a set of conspirators banded together to keep an honest man out of his rights. And when at the scene which Mr. Alfred Seymour described when he went to take final leave of the dead body of his sister, we find the defendant insulting him in the presence of other people, saying, "Alfred Seymour, you are a damned blackguard, seeking to keep me out of my rights," you will ask yourselves whether Roger Tichborne, brought up to be accustomed to the society of gentlemen and men of honour, would not have said, if he had been in that position, "Well, my uncle is against me; he does not believe in me; he puts himself in a position adverse to me, but I have known him for years, and I know he would not do it from other than an honest motive; there-



fore I shall feel myself bound, although I feel him to be my enemy, to treat him with decent respect." For, as one of the things we have to consider in this case, we have to look to the conduct of the defendant in the various positions he has been placed in since he has been in this country, and you will ask yourselves whether in his acts you recognize in him Roger Tichborne, from what you now know of Roger's former conduct and character. That was one of the reasons why, at the risk of wearying you by going through the correspondence of Roger and the details of his history, I thought it right to familiarise you with his character, and disposition, and sentiments.

I shall first bring before you the evidence for the prosecution—as it is for the prosecution to establish the affirmative of the proposition that the defendant is not Roger Tichborne. We have the members of the family. First, Roger's aunt, Mrs. Nangle, and her three children, who were his playmates in Paris, and his intimate friends in this country. Then we have his five cousins, the daughters of Sir Henry Joseph Tichborne. Then we have several more distant members and connections of the family: Mr. Talbot, Mr. Mansfield, Mr. Fitzgerald, Mr. Heysham, Mr. Burke, and Major Dease, who were all acquainted with him, and who make the same statement that the defendant is not Roger. Then we have the four members of the Seymour family: the two Mr. Seymours, Mrs. Bouverie, and Lady Rawlinson. Next we have the evidence of the witnesses who were acquainted with Roger Tichborne's earliest days. I mean the French witnesses—M. Chatillon, his tutor; M. D'Aranza, the familiar friend of the family; the Abbé Salis, who lived in the same house; the Père Lefèvre, who was the confessor of Roger; his relation M. de Brimont; the old servant Gossein, who was for fourteen years in the house, and saw Roger from the nurse's arms up to the age of advanced boyhood; Burdon, who was his father's servant for several years, up to the time Roger went abroad. All these have been called, and they have all declared their conviction that the defendant is not Roger. Then you have the different witnesses from Stonyhurst—witnesses who were acquainted with Roger when he was at school, or college, whichever you please to call it. These were Sir John Lawson, Mr. Mannock, Mr. Waterton, and a gentleman of the name of Williams, Humphreys, who was in attendance on Roger all the time he was there, Father Rigby, Father Mann, Father Etheredge, and Mr. Scott; they all speak with regard to him, and all say they do not believe the defendant is the man. Then we have the greater portion of his brother-officers—I think no less than ten of them—and with them some non-commissioned officers and privates of the Carabineers, who came and deposed to the fact, giving their reasons with reference to his personal appearance, of their disbelief in the identity of the defen-

dant with the Roger Tichborne they knew. I need not say that is a very strong body of evidence. I shall call your attention to the description which they give of him, not in lengthy detail, but sufficiently to enable you to see and compare by-and-by their statements with the statements of those who have been called on the opposite side to establish that the defendant is Roger. He has called, no doubt, a very strong body of evidence as to identity, and you will have to deal between the two by-and-by, and say which of them you think most likely to be true; and then, after all, there will be this last and all-important question, namely, whether the facts of the case, and, above all, the knowledge of the life of Roger Tichborne displayed by the defendant, or the ignorance of it manifested by him, lead you to the conclusion that the balance inclines on the one side or on the other; whether even if, on the evidence as to identity, the matter were left in doubt, the facts added to the evidence on the one side or the other lead to the conclusion that the defendant is or is not Roger Tichborne.

Let me first call your attention to the account of Roger given by the different members of the family. We shall have to contrast it with the account given by the different witnesses called for the defendant. Mr. Danby Seymour was asked, and stated generally that he was clearly of opinion that the defendant was not Roger. In cross-examination, his attention is called to the hands and feet. "Had not Roger small hands and feet?" and he answers: "He had bony hands; I should not say he had small hands; he had bony hands, red hands. *Q.* Were they not small?—I should not have said they were particularly small; they were what I should call very ugly hands. I do not remember his feet. *Q.* Did you ever notice anything peculiar in his walk?—He walked in a slouching sort of way. *Q.* Was he at all in-kneed?—I think he was. He walked in a slouching sort of shuffling way, not strong. *Q.* You have seen in-kneed and knock-kneed men; did he not walk much in the same way?—He walked in a slouching sort of way; I never saw his legs. *Q.* You have seen in-kneed men walking, have not you?—Yes. *Q.* Did he not walk as an in-kneed man walks?—I could not say; he was not so much in-kneed that you would say he was in-kneed." That sounds like a contradiction, but I think I understand what Mr. Danby Seymour means; it is that there was a certain degree of in-kneedness, if I may coin a word, but it was not what you might call downright knock-kneed, or in-kneed. Mr. Danby Seymour does not go into a personal description of the appearance of the man, but Mr. Alfred Seymour does. He says—"He was an exceedingly slight-built, narrow-shouldered, wiry, bony figure, with an expressive face, and dark straight hair, and exceedingly narrow-chested." There is very strong contradictory evidence about that, when we come to the Carabineers called on the part of the defendant; and

therefore it is necessary that we should see what these members of the family who were familiar with him say about it. Then comes the important question as to the twitch. Mr. Alfred Seymour says he had no twitch, "not the slightest." "I am prepared to swear," he says, "that he had no twitch of the eyes." Then he is asked about the thumb, which is another point made on the part of the defence, and he says—"I am prepared to pledge my oath that he had no malformation of the thumb."

Then comes Mrs. Bouverie, and I need not repeat that all these witnesses give the expression of their decided conviction that the defendant is not Roger. Mrs. Bouverie's account of Roger is that that "he had a long head and long face, while the defendant's," she says, "is perfectly round. Roger's hair was long and straight; quite straight; rather thin. He was very slight, and had no twitch as there is in the defendant." She is asked again—"Had not Roger a twitch?" and she answers—"Oh! no, he had no twitch." Asked about his knees, she says, "I should not say he was knock-kneed, but rather that he walked as if his limbs were loose."

Then we had Lady Rawlinson, who said there was no resemblance between the defendant and Roger; that "Roger had no twitch; that she never noticed anything the matter with the thumb; that it was a thing she must have noticed if it had existed, as she used to play at chess with him at Knoyle." "His hand was a thin, bony hand, with prominent knuckles." That statement is not unimportant, a witness for the defence, Miss Braine, having asserted that he had dimples in the place of knuckles. Several of the defendant's witnesses spoke of Roger having a thin, bony hand, which would show the knuckles as prominent.

Mrs. Nangle gives this description of him—"He was so slightly made, and his shoulders were so remarkably low; his chest was so very narrow; he had a long face, very beautiful blue-grey eyes, black eyelashes, black eyebrows, dark, straight, lanky brown hair. He had bony, long fingers, and very bony knuckles, very prominent." She is asked, "Had he any peculiarity about his thumb, or any defect in it?—Not the least in the world. Q. Was there any twitch about his eye?—Not a bit." One of you, gentlemen, asked whether he was like his mother, and she said—"Yes, he was very much like his mother." Afterwards my Brother Mellor asked—"You said when you saw the defendant you were quite sure he did not bear the slightest resemblance to Roger, whom you had known. In forming that opinion, did you make allowance for the difference in size?—Oh, yes. Q. You considered that?—Yes, it is much more than size; Roger's head was not planted down on his shoulders like a turtle; he had a very long neck—a long jaw"—That certainly the defendant has not—"Q. That is your judgment?—I am certain



of it, I knew Roger perfectly. Q. Would you describe the differences that are in your own mind?—Roger was five feet eight, or nine, and was very thin, and had very sloping shoulders, and a very long throat, and then he had a very long, narrow face, lantern jaws, and great length between the point of his ear and his chin. He had a narrow forehead—very fine eyes. Q. Prominent or not?—No, they were just like his mother's; very fine grey-blue eyes, with black lashes; he had rather arched, thick, black eyebrows—a very melancholy expression; in fact, he was exceedingly like his mother, and not in the least like the Tichbornes. Q. Now, you frequently saw Roger; did you notice anything at all about any of his fingers or thumbs?—No, he had a long hand, long fingers, and his knuckles were very prominent. Q. Did you ever notice any peculiarity at all in the top of his left thumb?—No, nothing at all; I never noticed anything about his thumb." I then asked her: "In speaking, did he gesticulate much?—Yes. Q. As Frenchmen are in the habit of doing?—Yes. Q. And his manner was that of a Frenchman?—Quite so. Q. And in doing that, was there any play of the features of the face?—His eyebrows used, when he got animated, to raise themselves rather, but in a quiet manner. Q. Do you mean the eyes or eyebrows?—The brows: they were naturally arched, and seemed to become more so when he was animated. Q. But still, as you say, very quiet?—Quite quiet; no twitching whatever, not the least. MR. JUSTICE MELLOR: Were his eyebrows thick?—Thick, black and arched. Q. Were they what are called 'bushy,' or only well developed?—Well developed, I should say. THE LORD CHIEF JUSTICE: You have seen him walking, I daresay?—Yes, I knew his walk well. Q. Was there anything peculiar about the formation of the knee?—I cannot say that. I know he had very thin legs, and used to walk a sort of rapid stride, bending his knees forward, that sort of thing." Then she speaks of his having a bit of hair which fell on his forehead, and his throwing his head back to get rid of it.

Major Nangle, who was Roger's playmate in boyhood, speaks of him as being "a complete contrast to the defendant." He is asked to give his reasons for saying that, and he says—"Roger Tichborne whom I knew was very slim, very delicate, with a long neck, drooping shoulders, a very careworn expression of countenance, sallow complexion, black hair, very lank, and he was in the habit of knocking it off his head; it was very rebellious, with not a particle of curl. Q. As regards his manners?—A perfect gentleman. His tone of voice was very soft and melodious. Q. The defendant's tone of voice—you have had plenty of opportunity of hearing that?—Is just the reverse." Then he says Roger's hands were very thin and inclined to be bony. He never noticed that the thumb was out of order; his shoulders and chest were very narrow indeed.

Next, Captain Nangle says that the two men are "entirely different in every respect." "Roger's hair was nearly black, extremely dark and straight, and he had a fine, flat, open forehead, a very thin face—if anything it came down to a sort of pear-shape, broad at the top and very thin down below—very fine eyebrows, very good eyes indeed, a light blue-grey sort of eye, and black eyelashes." On cross-examination he speaks of him as a "small-made man, a slight, slim, smoke-dried individual, who seemed very pale from excessive smoking."

Lady Dormer gives a very full account of him. She says: "He was a slight man, about five feet eight inches in height, I should think, or five feet eight and a half; with narrow shoulders, sloping—very sloping, and rather a small waist."—The witnesses on the other side say directly the reverse of this, therefore it is necessary to attend to what these members of the family say.—She continues, "He was very gentlemanlike-looking, and had remarkably pleasing manners; he was much more like a Frenchman than an Englishman. *Q.* What is your recollection of his face?—He had very good eyes—very expressive eyes, marked by brown eyebrows—very dark eyebrows; very dark hair—dark, lanky, soft hair. He had a sallow complexion; he had a very ugly nose—very open nostrils. *Q.* Was there any peculiarity, do you remember, about him?—No, nothing; he had a way of raising his eyebrows when excited. His mother had just the same, but no twitching or anything of the sort. *Q.* His mother had that?—His mother had that very much. *Q.* No involuntary twitch?—None whatever." The twitch is one of the very great points made on the other side. These witnesses all seem to ignore it, though they say he sometimes raised his eyebrows, you are aware, in conversing. As to his hand, she says, "It appeared to me to be a bony, ugly hand. *Q.* Any peculiarity at all, or any defect in the thumb of either hand?—No; I am sure I should have remarked it if there had been, either in his feet or hands, or anything. *Q.* But you never heard of that?—No, I never heard it mentioned. *Q.* Do you remember his walk?—Yes, he did not walk well, a shuffling sort of walk; he rather shuffled in his walk, but he had no deformity." She says he spoke French by preference, and that they came to an arrangement that he should speak French and she English. On cross-examination she is asked, "Do you remember that his mother had a movement of the eyebrows?—Yes; nothing peculiar except she used to raise her eyebrows when she was very excited, and so did Roger. *Q.* Which of the two, if either, did Roger resemble, father or mother?—His mother; he was an ugly likeness of his mother. *Q.* Not like his father?—Not in the least. *Q.* Not like the Tichbornes?—Not in the least."

Mrs. Greenwood, the next witness, who knew him extremely well, because he was so much in the habit of going to her place at Brook-

wood, says, " He was very slight, exceedingly slight, narrow-chested, with falling shoulders; he was long and narrow in every way; he had a long, narrow face, a long nose rather projecting from the face, with rather a thick end to it, not the least aquiline; a long chin, rather a long, heavy chin; I cannot recollect any dimple in the chin, but it was a long chin and a very long, narrow face. He was pale and sallow, had very dark hair, two or three shades darker than my own, quite straight, and before he went into the army worn very long. Very melancholy, grey-blue eyes, large, grey-blue eyes. His forehead was rather falling back, not at all a projecting forehead. He had rather long arms and long thin fingers—bony—and his knuckles very strongly developed. *Q.* His complexion?—Pale, rather inclining to be sallow, but very pale; he had a slight moustache when he went into the army; before that I think he wore a little tuft, no whiskers; I saw him when he was 24, and he had no whiskers then, a perfectly smooth face. *Q.* You have told us his general figure and appearance. Was there any defect in his knee?—No, I think he had very straight legs, and rather long arms, a very wiry-looking person. He looked as if hung on wires, a very loose-made person. *Q.* He looked as if hung on wires?—As if hung on wires; he had long, thin arms, rather strong arms I should say. *Q.* Was there anything extraordinary in his walk?—I fancied he walked like a Frenchman, a short, quick walk, nothing particular, very straight legs. It always struck me he looked like a Frenchman. *Q.* In the course of your long knowledge of him you have seen his hands?—Yes. *Q.* Is there any pretence for saying there was any peculiarity or defect in his thumb?—I never saw it. *Q.* Have you heard of it even?—I never heard of it or saw anything of the sort." Then she is asked about the twitch. "*Q.* You have seen the twitch of the eye which the defendant has?—I never saw anyone who could look you in the face more posedly and more quietly than Roger. When he spoke he always looked at the person he was speaking to, and never twitched in the least. He had a manner of raising his eyebrows when talking earnestly, but nothing more than anyone else." Then I asked her, " You say there was no twitch, but when he was talking he occasionally raised his eyebrows?—When he was very earnest in any conversation his eyebrows were very marked; I think they were slightly arched." On cross-examination she is asked to look at the defendant's thumb, which she does, and is asked whether she is prepared to say Roger had no such peculiarity. She says " I never even heard of it." About the twitch she is asked, " When he got very ardent or excited about anything was not there a constant moving of the eyebrows?" and she distinguishes and says, " No, he used to lift them occasionally and keep them in that position for a short time."



Mrs. Townley, another of the cousins, speaks more strongly as to the formation of the knees. She gave a general description of him, which corresponds with that given by the others, and then she was asked, "Was there anything you ever noticed in the walk of Roger?—Yes. Q. Would you describe what you did notice?—He always struck me as being rather knock-kneed; his legs were so very thin, and they looked so very weak, and in walking he always impressed me with this idea." Then again: "You say he struck you as being knock-kneed. Was that walking or standing still?—Walking. Q. Never at any other time?—Never at any other time." Dr. KENEALY asks her in cross-examination, "Now, had not he peculiar knock-knees?—Well, in walking, he always gave me the idea of being knock-kneed. Q. Now, as to the twitch, did you ever notice the twitch in Roger's eye or eyebrows?—Never. Q. Any movement?—None whatever. Q. You say his eyes were different from the defendant's; are they a darker blue, or lighter blue, or what?—Well, they are quite different eyes; the expression is quite different, and the colour struck me as being different. Q. Is the colour different?—Yes, I should think so. Roger Tichborne had peculiarly blue eyes, light blue, with very long, black eyelashes."

Then we have another of the cousins, Mrs. Washington Hibbert. She is asked: "What sort of a young man was he as to his personal appearance?—He was a young man about five feet eight or nine inches high, very thin and sallow, and very narrow made. He had sloping shoulders, and very good eyes. They were greyish-blue eyes, but looked darker from having long, dark lashes, and very marked, dark eyebrows. He had rather thin, but lanky hair, and long, which was always coming over his head, and he shook it off." Then she says, having seen the defendant at the Law Institution, and on several occasions during the trial, and having heard his voice and had plenty of opportunity of judging him, "he is not the least like Roger; he is neither in shape nor form, nor manner, nor tone, nor voice, nor any features, the least like him, in any possible way." Then she is asked, "You remember Roger's French accent?—Perfectly. Q. And do you remember the tone of his voice?—Perfectly. Q. You heard the defendant examined; is the tone of his voice like that of Roger's?—Not in the smallest degree. Q. Do you remember Roger's thumb? Do you know anything about a thumb?—He had large knuckles like mine, and what we call a Tichborne hand—long fingers. Q. Did you ever hear of any peculiar formation of the thumb until this was mooted about the 70th day of the trial?—Never; I never heard of such a thing." Then she says what these witnesses agree in, that the defendant's hair has become gradually darker since the commencement of this litigation, and his being present in court—I do not mean at this trial, but at the former trial. Whether that is so or not, I

believe people can make their hair darker by applying dye to it, but then that must be continued. It is a question upon which we have not evidence enough before us to be able to say whether you can, by any application to the hair whatever, give to it as it grows a darker shade. It would seem, from the evidence of Mr. Attwell, that by careful manipulation of the hair with unguents of that kind, oil or oleaginous substances, you may darken the hair for a time. Whether the defendant has done it I cannot undertake to form an opinion, and the evidence is too doubtful to justify us in saying that he has resorted to any means of that kind, so as to make the lighter hair of Arthur Orton conform to the colour of that of Roger. When asked about the identity, Mrs. Hibbert, who gave her evidence with great intelligence and composure, says, that in her opinion, "it is quite ludicrous and absurd that the defendant should ever have been mistaken for Roger Tichborne; that he does not resemble him the least in the world; no two people could be more diverse."

The last of these ladies is Mrs. Higgins, who knew Roger Tichborne as a child; and she says that on his coming over to the funeral in 1845 he was then almost a Frenchman, although he spoke French indifferently. She knew him at Knoyle when she was at her father-in-law's, Mr. Bennett's, who lived in that neighbourhood, and comes to the conclusion that he is not Roger. She was cross-examined in a manner which I could not but very much regret. She was asked about her second marriage, and there seems to have been a desire from the beginning to say everything that could be offensive to the late Mr. Higgins. It was apparent from the sort of attack that was made, that, on the defendant first presenting himself, Mr. Higgins took an active part in investigating the matter and denounced his pretensions as unfounded. That seems to have inspired the defendant or his advisers with a peculiar animosity towards Mr. Higgins, which was displayed in more ways than one by the counsel for the defendant in the course of these examinations and his address. I do think Mrs. Higgins might have been spared the annoyance of an inquiry into her domestic relations: there was nothing whatever in her agreeing with her sisters and denying the existence of this twitch, or in the rest of her evidence, in the slightest degree to call for any attack, but she was asked whether her marriage was not a cause of dissatisfaction. "Yours was a second marriage?—Yes. Q. I am sorry to have to ask you; was it approved by the family?—I was married from my mother's house at Brompton, and given away by Lord Dormer, my brother-in-law; so I do not think any of them showed any great opposition. Q. Did Roger express any disapproval of it?—Roger Tichborne? Q. Yes?—I never heard him express any opinion about it; I believe he called at my house in 1853, just before he went away, but I was not at home; I

do not think he showed any opposition to the marriage at all ; I have never heard of it until this moment. Q. Did Mr. Higgins take a very prominent part—he was a newspaper writer?—He wrote occasionally in the newspapers—frequently, I may say.” Now why should all that be gone into except for the purpose of annoyance? All that we know about it is, that Roger, on receiving from Lady Doughty the news of Mrs. Higgins’s second marriage—she was then Mrs. Bennett—says he was not aware that Mr. Higgins had proposed to her before—a fact which Lady Doughty mentions—and that is the only observation he makes. It was obviously put to her partly to annoy her and partly from feelings of spite against poor Mr. Higgins’s memory. I do not say it came from the defendant ; but I cannot allow conduct of that offensive character on the part of counsel, for which I can see no motive except the gratification of some one’s spite, to pass without observation. If the conduct and testimony of a witness calls for observation, of course it is the duty of counsel to make such observations as the circumstances may require ; but I do not admire the practice of a counsel going out of his way to annoy a witness, for the gratification of some one’s malignity, as was the case more than once on this trial.

I pass on to the friends of the family, and I do not know any one whose opinion is more to be valued than Colonel George Greenwood, inasmuch as he knew Roger from the time he first came to England. He lived with his brother and Mrs. Greenwood, at Brookwood, in the immediate neighbourhood of Tichborne ; and he was exceedingly kind to Roger. He knew him down to 1849, and saw him constantly. He describes him as “a thin young man, with a narrow face, and rather a sallow complexion, and with dark, straight hair ; rather narrow-chested, and sloping-shouldered.” He tells us that he weighed him in 1847, at which time Roger would be eighteen years of age, and that he then weighed only eight stone twelve pounds, which I need not tell you is a very light weight for a young man of eighteen. Colonel Greenwood said he had not the least doubt that the defendant is not Roger Tichborne.

Then Mr. Mansfield, who is a connection of the family, and who met Roger in April, 1849, at Mrs. Washington Hibbert’s, describes him, and gives a very striking account of him. He says: “He looked like a wild animal just caught”—he had just left Stonyhurst you know—“He had a mixed expression of melancholy, surprise, and alarm, I may say almost, on his features ; I never saw anything at first sight so striking in a young man ; and then he was unhealthy-looking, with rather remarkably narrow shoulders, his hair flying about. At first sight his appearance was decidedly unprepossessing. I learned to like him afterwards, and afterwards when I saw him again in London his appearance had very much improved.”



Mr. Fitzgerald, who is another connection of the family, says he met Roger Tichborne in the summer of 1849, and what he noticed about him was that "he was a loose-made man, not well set up." "I walked about with him a good deal," he says, "and never observed that he was in-kneed. There was nothing particular about his walk. He walked like other people, and was a very slight man." He speaks of him, as down to that time, which was after he had been to Stonyhurst, speaking broken English and using French idioms; if he had not known who he was, he should have taken him for a Frenchman.

The next witness was Mr. Heysham, a barrister, and connection of the family—Mr. Robert Tichborne having married his aunt, Miss Nunez. From 1844 to 1847 he lived in the village of Tichborne, before he went to Oxford, as a pupil of the Reverend Alfred Bishop, the then curate. He knew Roger well from the time he first came over to attend Sir Henry's funeral until 1849 or 1850, but never saw him afterwards. Whenever Roger came to Tichborne on a visit the witness generally dined there two or three times, and also went out with him on various occasions, and became very intimate with him, seeing him frequently. The witness says that in those days he could not speak French, or Roger English, and they did not in consequence get on very well at first: but in the second year after Roger came from Stonyhurst he spoke English, and then they could communicate with each other. He particularly noticed his mode of speaking. He always used French idioms, and there was a very marked peculiarity in his accent, and which, said the witness, "I shall never forget, and which satisfied me, when I heard the Claimant at the Law Institution, that he was not Roger Tichborne, as Roger Tichborne was utterly unable to pronounce the letters 'th.' Roger would invariably call Southampton, Soutampton; he used always to say, 'I will go to Soutampton,' and the Claimant, at the Law Institution, distinctly said Southampton with the 'th' as plain as I can." He goes on to say, "There is not a shadow of resemblance between the defendant and Roger." In answer to Mr. Justice Mellor, Mr. Heysham stated that he was perfectly familiar with Roger's voice, which was soft and liquid, and had nothing harsh or grating about it, not in the least resembling the defendant's when he heard him at the Law Institution.

Then we have Miss Weld, who was staying at Tichborne, at Christmas, 1851. She was called principally to prove the conversation about the tattoo marks; but being asked whether the defendant is Roger, she says there is not the slightest resemblance. On cross-examination she is asked the colour of his eyes, which she did not remember, but says "his hair was very dark brown, almost black. Q. Did you ever notice anything about Roger's walk peculiar?—No, I never noticed anything remarkable. Q. He walked like other people, without any peculiarity?—Like a soldier, I think." She

says he was tall and slight, with sallow complexion and dark straight hair.

We have further Mrs. Whitgrave, who was a Miss Mostyn, and who was twice on a visit to Tichborne, the last time in 1852, when Roger Tichborne was there. Being asked to describe Roger, she says, "He was a very interesting sort of person—melancholy looking. Q. First of all, as regards his general appearance—that is to say, his personal appearance?—I remember his eyes perfectly well—the expression; he had dreamy blue eyes, with a great deal of expression in them—eyes that one would not easily forget. The character of his face was pensive, melancholy. He had a long, thin face. His complexion was sallow. His hair was very peculiar—a sort of lank hair, very peculiar; it used to fall into his eyes sometimes, and he used to shake his head; its colour was dark brown.

Q. Was there any peculiarity at all about him—any twitch of the eyebrows or face?—I never noticed a twitch; there was a little movement about his eyebrows sometimes, when he was a little animated; that was all? Q. As regards his person itself—his size?

—Very slight; I should say painfully thin. Q. Was there any peculiarity at all about his walk as far as you observed it?—I should say his movements were languid; I never notice people's walk.

Q. Do you remember the character of his hands?—I think he had very bony hands; but I do not remember his hands very distinctly. That is all I remember. Q. Tell me what his manner was?—I think his manners were very pleasant; he was very courteous and very amiable; always a gentleman."

Then she says: "His voice was very trying to me. Very often I lost three or four words in a sentence, he spoke so indistinctly. He spoke a mixture of French and English." In cross-examination she is asked: "Did you take sufficient notice of him to observe whether there was any mark about his eyebrows?—The eyebrows were peculiar. Q. You say there was something peculiar about his eyebrows: was there a sort of peculiar twitching?—No, no twitching at all. Q. Was there anything peculiar about the eyebrows?—They were rather arched, and he had long eyelashes and very expressive eyes. Q. But nothing peculiar in the movements?—Sometimes there was a little movement about his eyes, I should not call it a twitch."

Then I observed: "She said just now, when he became animated there was a movement of the eyebrows sometimes. Mr. McMAHON: She says she would not call it a twitch. The LORD CHIEF JUSTICE: So she said before. Mr. McMAHON: What would you call it?—A little movement."

Then comes Mr. Gosford, and if there was anybody in the world who ought to know Roger Tichborne, and who, apart from any undue, sinister motive, such as has been ascribed to him, might be taken to exercise a fair, unbiassed judgment, Mr. Gosford perhaps is the man.

He is asked, "Was there any deformity or peculiarity about his legs? Nothing to notice; he had a peculiar walk which was noticeable; he turned his toes out, and jerked his legs forward as he walked. His step was rapid, and there was a loose way of stepping, not the firm tread of a soldier, but a peculiar step, a jerky action of the leg as he threw it forward, but no deformity whatever that would be noticeable. I have seen him walk, run, jump, and dance scores of times, and could not have failed to notice anything peculiar. The LORD CHIEF JUSTICE: Still there was something in the walk that might have attracted any one's observation?—You might have said that is just like Roger's walk. It was rather different from the steady walk of anybody else, but it was a very active walk; there was no impediment to his moving. He was very active indeed; incessantly on the move."

On cross-examination, the subject is resumed. "Was there anything at all about his legs that ever attracted your notice?—Nothing whatever, except his habit of walking with his toes turned out. It was more the action of the legs—not the shape of them; they were very thin legs." Then comes the question of the twitch by which you remember, as also by the formation of the legs, the Carabineers principally recognized the defendant. "You have seen what has been spoken of as the twitch of the eye?—Yes. Had Roger anything of that sort?—Not the slightest; no more than I have or you. It was one of the first things I remarked upon, the absurdity committed by all those persons who—perhaps I had better not allude to it, because it was a thing that we laughed at throughout, all we who knew Roger; and we threw that into such ridicule, this hitting at a thing which did not exist; it never had the slightest existence." Then my Brother Mellor puts this question, "When he was animated in conversation, or gesticulation, or otherwise, had he any trick of raising his eyebrows; I do not mean twitching them?—Yes, just as I might do." Then he showed us how he raised his eyebrows, and added, "His eyes and the cast of his features, and the general expression of his face, had a peculiarly pensive, calm look in repose. I have watched him many a time. He had a peculiar way of sitting as he sat in his chair for a long while together—a peculiar way of sitting with his head on one side. Q. Hanging down?—Yes, and thinking. The face had a peculiarly pensive expression. Q. Does that recall him (handing a photograph). Your speaking of his head being on one side brought that photograph to my mind?—Yes, that is just exactly what I meant to express; that is the way he would sit for hours together, just that expression. Yes, there it is again (looking at another photograph). That was observable, too, not only when he was sitting, but when he was standing addressing you, his head would assume that position. Q. Did he gesticulate much?—He



had a good deal of movement ; he spoke with a great deal of rapidity, and clipped his words, and it was such excessively French language that my wife—we knew him very well indeed—always declined to the last to talk English with him ; she had been educated abroad and could talk to him in French, and understood his French better than his English to the very last. It was very difficult to understand ; he spoke with great rapidity, and clipped his words. *Q.* You know foreigners are in the habit of gesticulating much more than we Saxons?—Yes, he had that habit—not so much as many Frenchmen, but there was that habit still. He would do this (moving his hands).

*Q.* And did the face correspond?—Yes. *Q.* And the eyebrows go up in the same way?—Yes, he raised his eyebrows just like that, but as to any actual twitching, it is absurd. *Q.* You never saw any nervous twitching?—Nothing of the kind.” Then on cross-examination about that he is asked, “As I understand you it was only occasionally he would elevate his eyebrows, when he was expressing surprise?—Yes. *Q.* It was not a habit?—Not more than is usual with many Frenchmen—every time he was a little animated you would see it ; at another time you would not see it ; when he spoke with a little surprise you would see it. *Mr. JUSTICE*

*MELLOR* : You have told us with reference to the expression of the eyebrows when animated or conversing ; have you ever heard it said in the family, or by Roger Tichborne, that he had ever had, at any period of his life, St. Vitus’s dance?—No, I never heard it from any one. I am sure I could not have forgotten that. I never heard a suggestion of it. *The LORD CHIEF JUSTICE* : Or any nervous affection?—Not the slightest ; his brow was as clear and open as it is possible to conceive—no twitching, no nervousness, but a well-defined, arched eyebrow. *Q.* Some persons, without having nervous affection or twitching, when in animated conversation, generally raise the eyebrows?—Yes, many ; I know many who have that occasionally when a little excited ; but Roger Tichborne had nothing of the kind. It would be more like, if I may so express it, opening the eye a little wider, just raising the eyebrows. There was nothing more about Roger Tichborne, as you will hear from everybody who knew him well.” As to his voice, he says “Roger’s voice appeared just to come from his mouth, as all voices, you will say, my Lord, do ; but what I mean is, it did not seem to extend into the throat ; there was no depth about it, a little rapid way of uttering ; as, for instance, in saying, ‘Will you come with me ? I want you to come with me directly’—very like Lady James Tichborne—a great similarity. Now, the defendant’s voice, which I had on the first occasion such a good opportunity of hearing, and on so many occasions since, is such a total contrast.” Then I said to him, “Singers distinguish between head, throat, and chest voices ; which would you

call his?—I should call his a head more than a throat voice; it seemed to come just from his mouth and no deeper. There was no depth of tone in it.” When asked whether the defendant is Roger Charles Tichborne, Mr. Gosford says, “No, most certainly not; I am as positive of it as I am of my own existence at this minute, and perhaps I may, speaking so positively, give a few reasons why.” What the witness here proposed to do was not only to give the differences in the personal appearance between the two as the reason for saying that the defendant was not Roger, but to go into the various conversations and other circumstances, which it is quite right you should take into account, but which a witness must not, because in so doing he would be usurping your place, which is to form a judgment on the whole of the circumstances and facts together, while the only judgment as to which the witness could be legitimately asked was his opinion founded on the personal appearance of the individual.

Then Mrs. Gosford was called, and her view entirely coincided with that of her husband. She says that nothing could be more dissimilar than the defendant to the Roger she knew so intimately; the shape of the face different; the hair different; Roger’s hair very lanky, without the shadow of a wave in it; and upon the whole she is decidedly of opinion that the defendant is not the man.

Burdon comes next, a man who was seven years in Sir James Tichborne’s service. He says, “Roger was a very weak, sickly young man, and he would not walk as a strong, stout, hale, hearty man would do. He rather limped, but I never noticed any other peculiarity about him. Q. Did you notice that he was in-kneed?—No, his legs were perfectly straight; I have seen him stripped on many occasions; I never observed he was in-kneed.” Then with regard to the motion of the eyebrows. “Did you never see Roger move his eyebrows?—Never in my life. Q. If he did, you must have seen it?—I must have seen it, being so intimately acquainted with him as I was.”

Next we have the witnesses from Stonyhurst—Sir John Lawson, Mr. Waterton, Mr. Mannoch, and Mr. Williams, Fathers Bird, Mann, Etheredge, and Rigby, Mr. Scott, the infirmarian, and Humphries, the attendant on the philosophers—who all agree that in their judgment the defendant is not Roger; and I may summarise the evidence of most of them. They all agree with regard to Roger’s hair, that the hair was brown. One of these witnesses says it was a very dark brown; two say that it was a light brown; all agree it was straight, and that he wore a forelock, at least he allowed his hair to fall over his forehead and assume the character of what used to be called a forelock; and he had a habit of tossing his head to throw it

off. With regard to his figure, they agree that it was bony and slight, and that he was narrow-chested. They agree that he had a pale, sallow complexion.

With regard to his knees, Father Rigby says he was not in any way in-kneed; the rest of them, with the exception of Mr. Scott and Lord Bellew, say nothing on that subject.

There are three of these witnesses whose evidence I think is worthy of a more elaborate statement. One is Mr. Scott, the infirmarian, who knew Roger Tichborne all the time he was at Stonyhurst. He is asked, "You knew Roger Tichborne very well; would you describe to us in your own way his personal appearance from your memory of it?—He was very thin, narrow-chested, with very dark-brown hair, and the lobes of the ear, I observed, were grown to the cheek." Now that is an important point, if the gentleman's recollection can be relied on—"the lobes were grown to the cheek. Q. Was his hair straight or curly?—Perfectly straight and long. Mr. JUSTICE LUSH: You used some expressions about the lobes of the ears?—They were grown to the cheek, not detached. Mr. SERJT. PARRY: How came you to notice that fact?—I observed it when talking to him. It was a thing that took my notice. I do not remember ever making any remark about it, but still it was one of those things that I observed. Q. In the course of your duties at the infirmary would you be in the habit of making observations in your own mind of this sort as to the personal appearance of those who came under your care?—Yes, as a general rule I made myself more or less acquainted with their appearance, and it gave me a clue to what might follow in case they wanted any assistance—their general appearance. Q. And you are quite sure as to the fact of the lobes of Roger's ears?—Yes." As regards his general description he says, "He was very thin, narrow-chested and bony, with thin, bony hands. Q. Did you notice anything about the knuckles?—I did not observe the knuckles further than his hands were bony. Q. Did you ever notice anything about Roger Tichborne's thumb?—I never observed anything on his thumb. Q. Or any mark?—Or any mark. Q. Nor did you ever hear of it?—Nor did I ever hear of it. Q. Did he ever put it out to you or complain to you of anything?—Never. Q. Would you describe about his legs?—He seemed weak on his legs when he walked. His legs appeared to be perfectly straight; but when walking seemed to give way a little from want of strength. The LORD CHIEF JUSTICE: You say they were straight?—His legs were straight. Q. But in walking?—He bent his knees." This description as regards the knees tallies so entirely with the account given by some of the witnesses for the defendant in the matter of Arthur Orton that it is certainly deserving of considerable attention. "His legs were straight; but in walking he bent his knees. Mr. SERJT. PARRY:



From weakness, I think you say?—Yes, as though it was from weakness. Q. When he was standing up straight was there any defect in the make of his legs?—I never saw any. Q. But when in motion you did notice what you have told us?—Yes, as that which would arise from weakness of the legs, I think.” Then as to his voice. “Do you remember his voice?—He had a small voice, rather a weak voice. Q. And his accent which we have heard so much about?—Was exactly like that of a Frenchman; if I had not heard his name, I should have supposed him to be a Frenchman. Q. When you first knew him; but I suppose he got a little better before he left?—A little, but not very much. Q. But he spoke English, I suppose?—Oh, yes, very much better.” Then he is asked, “When did you first see the defendant?—Last Monday. Q. And you see him now?—Yes. Q. You have seen him since last Monday several times; having had the opportunity of fully seeing him, is he the Roger Tichborne you knew of Stonyhurst?—Certainly not.” Having said he was pigeon or narrow-chested, on cross-examination he is asked, “Would you explain to us what you mean by pigeon-chested?—The bones of the chest, when they go up into a convex form instead of lying flat.” Several of the witnesses have said that, but there is a strong body of evidence the other way.

Then the Reverend Mr. Bird, who saw a good deal of Roger, is asked whether he is of opinion that the defendant is Roger, and he says, “Certainly not. Q. Do you see any resemblance between him and Roger Tichborne?—No; I see no resemblance at all now. When I saw him in 1867, after what I had heard, I tried to see some little resemblance, and I thought I did see some little resemblance in manner, but even if I did the difference was so striking, that there would be no mistaking the non-identity of the two persons.” He says he has a distinct recollection of Roger’s face and features, and he was struck with these differences. “There was a remarkable difference in the forehead. The forehead of Roger Tichborne was flat and very squarely shaped, very angular at the temples. Roger Tichborne had a straight nose, inclined to turn up. Roger Tichborne had a mouth with thick and not clear lips, but still with a shape in the mouth, and Roger Tichborne’s lower jaw was very square, in all which points I see a remarkable difference.” He says Roger had a French accent, whereas the defendant when examined did not strike him as having the accent of a foreigner; he did not notice any French accent at all. Then the Chili photographs were produced; and he says they seemed to him fair likenesses.

Then comes Lord Bellew, and I am now dealing with his evidence only as regards the subject of personal appearance. He describes Roger as “slight, rather angular-looking, with dark brown hair, very straight, and hanging over his forehead, and he had a habit of

throwing it back. I should say he turned out his feet. Q. What sort of chest had he?—Narrow-chested of the two. Q. Do you remember his voice?—Perfectly. Q. You have heard the defendant speak, I believe?—I have. Q. Was it anything like the voice of the defendant?—Not the slightest. Q. Now the little sketch you made of him (the witness had produced a little caricature sketch he had himself made of Roger) does that bring to your mind again the features of Roger Tichborne? I do not put it as a work of art, but does it recall the features to you?—Something.” In cross-examination he is asked, “ Was Roger Tichborne in-kneed?—No. Q. He was not?—No; he had the appearance rather of being knock-kneed, but his legs appeared to me to be straight when he was standing. Q. Have you not said he was slightly knock-kneed?—He had the appearance of it, because he turned out his toes; the man himself was not literally in-kneed; he had the appearance when running of what some people call ‘ Frenchman’s legs ’”—I do not know what Lord Bellew meant by that. “ Q. Have you a general recollection of his hair?—Yes, perfectly. Q. What colour was it?—Dark brown. Q. Had he bluish grey eyes?—My impression is they were something of that colour.”

So much for the Stonyhurst witnesses. I now come to the evidence given by the officers of the Carabineers, who knew Roger Tichborne when in the regiment, which extends over a period of three to three and a half years. It is necessary with reference to this evidence to distinguish between mere opinion as to identity founded on the recollection of personal appearance, and evidence as to facts connected with the undoubted Roger Tichborne or with the defendant; and I should have been desirous, had it been possible—as the more logical arrangement—to have kept the two heads of evidence separate, and with that view to have gone through the witnesses a second time. But to do this it would have been necessary to draw still more largely on your time and patience, and I have thought it more convenient, on the whole, to go through the entire evidence of each witness both as to personal appearance and facts bearing on the question of identity, trusting to you to distinguish between the two heads of evidence, and to apply each to that branch of the inquiry to which it belongs.

The first of the officers was Captain Fraser, who, during the time Roger was in the regiment, was the regimental sergeant-major, and had the whole management of the drills—of course under the commanding officer and the adjutant—and he tells us he knew Roger for eighteen months, until he left for Clonmel, which he did, as we know, in the month of April, 1851. Captain Fraser was first asked as to Roger’s military capacity; and what he says about this part

of the matter will become important by-and-by when we test the memory and knowledge of the defendant, and see whether it comes up to what we have fair reason to suppose would have been the military knowledge and recollection of Roger. He is asked, "Did you find him a gentleman who was able to understand and comprehend the instruction you gave him?—I found that to be the case, but his want of knowledge of the English language caused him many a time to be laughed at in squad drill where otherwise he would not have been laughed at. That prevented him making as much progress as he really would have done. Q. Did he understand and take in the instruction you furnished him?—Yes. Q. And understand the military terms that you applied to that instruction?—At first he did not understand them, but ultimately he became thoroughly well acquainted with them, and was a most exact officer in doing his duties, and was very attentive to all his drills. Q. Did he understand the movements and evolutions of the regiment?—Pretty well, considering he was only a young fellow. Q. I mean at the end?—Yes, at the end. I had the constant drilling of him for about eighteen months until he marched with Captain Polhill Turner to Clonmel. After that I did not see him again until he joined the head-quarters of the regiment in Dublin in 1852. Q. Had he completed his drill?—No; he had the usual two drills, but the extent of the numbers was small in comparison with being at the head-quarters of the regiment. He was quite qualified to go to out-quarters when he was sent from Cahir to Clonmel. Q. I should like you to tell us your recollection of Roger as to his personal appearance?—His personal appearance was not very nice. He was a young fellow, and he was very thin indeed—exceedingly thin—and not at all appropriate for the service. He was what we would have called a weed; a weedy young fellow. He had no chest at all; he drooped his shoulders. Q. Do you recollect his hair?—Perfectly. The colour was what I call dirty brown; it was neither black nor brown, with no inclination to curl at all; none whatever. Q. His complexion?—Sallow. Q. Was there anything at all about his eyes?—Not anything more than there is about mine. Q. No twitch of the eye?—No; nothing whatever. I ought to know him well, for he was in my hands for the first three or four or five months, perhaps three or four, and every day. Q. How did he walk?—He walked perfectly straight. I always fancied, and do fancy to the present moment, that he was weak in the limbs. He had no legs, no thighs, and no calves to his legs; but he was perfectly straight upon his limbs, if you can understand me. Q. But weak?—Weakly; he always appeared to me to be weakly." Then he is asked as to his disposition and habits. "Was he a favourite among the officers?—He was a favourite, but he suffered a great deal from the practical



joking; for at that time in the service there was a great deal of that carried on, and he had a full share of it. He was very exact in doing his duty when officer of the day. If you can understand me, if a man was late watch-setting—ten minutes—Roger always had him confined, according to directions given. The men did not like that, and called him ‘Frenchy,’ and things of that sort, and used to laugh when he gave the word of command. *Q.* He was strict as the officer of the day?—Very strict in doing all his duties. *Q.* Did he attend well to his military duties?—Yes, no young gentleman could have attended more strictly to his duties, and he was most exact in all his duties. **THE LORD CHIEF JUSTICE:** Was he liked by his brother officers?—He was liked, but they could not help playing those practical jokes, because he did not resent them; and I myself told him to turn on them, which he never would do. **MR. HAWKINS:** What sort of disposition was he?—As kind a young fellow as ever breathed. *Q.* Your commission was given to you in the year 1851?—Exactly so. *Q.* You had drilled him?—Constantly. *Q.* After that did he become a constant associate of yours?—I frequently saw him at night after coming to Dublin. When the officers had not much to do, and no previous engagements in the city, they used to meet together in one another’s rooms, and they might have been a little rougher than they ought to have been. *Q.* I am asking about your own personal acquaintance?—I was well acquainted with him, and when they used to go on with practical jokes of this sort I told him to resent them. *Q.* After 1851 did you become a constant friend of his?—I may say I was; he used to come and tell me his little grievances, and sometimes he used to threaten to go to the commanding-officer. I told him to resent them, and turn on the other young fellows for what they had been doing to him.” That is the substance of Captain Fraser’s evidence, with the exception of one incident, the snuff-box, which we had on a former occasion, and which there is no necessity for going into again.

The next witness was Colonel Bickerstaff, who was the adjutant of the regiment at the time Roger Tichborne joined it, and who says he remained throughout the time of Roger’s service on the most intimate terms with him. He is asked to describe him, and he says, “He was very slight, with very sloping shoulders. He had rather a pigeon breast; narrow-chested, with pigeon breast. He suffered a great deal from asthma, and it gave a kind of wrinkled look to his face, a haggardish look. He looked much older than you would have thought he ought to look for his age. He had dark hair, perfectly straight, and plastered down on each side; he always plastered it down quite to his head. *Q.* How did he walk?—I cannot say there was anything peculiar about his walk. He had a very curious way of kicking his sabretache as he walked along, a sort of

awkward way of kicking it as he walked." Now this witness, having been the adjutant, would have occasion to see him constantly at drill. I therefore asked him—"Did you ever notice any peculiarity about the formation of his legs?—Not the slightest. **MR. HAWKINS:** Was there any peculiarity about his face at all, his eyes, or anything?—His eyes were rather watery, particularly if there was a cold wind; his eyes and nose were very red, both of them. **Q.** Was there any twitch of the eye?—Not the slightest. **Q.** Was there anything about either of his thumbs, any peculiarity?—I never saw any." He is cross-examined. "Had he always the habit of kicking his sabretache?—Always, whenever I saw him; whenever he used to walk he had a habit of kicking against the sabretache as he walked. **Q.** Does the sabretache fall by the side of the right or the left leg?—On the left leg. **Q.** And he never got out of that?—Never, to my knowledge; I always observed it." Then about the twitch of his eye. "Did you notice any twitch of his eyebrows?—I have seen him lift his eyebrows with surprise, and that sort of thing, but no twitching. I have never seen twitching. **Q.** Was not he in the habit of moving them when he was particularly interested in conversation?—No; I do not think that at all, only in surprise: if he was surprised at anything his eyebrows would go up a little, or that sort of thing; but I do not remember any twitching at interesting conversation at all. **Q.** I did not ask you about twitching, but about the elevation or depression of his eyebrows when he was engaged in conversation; did he elevate or depress his eyebrows?—I did not notice that. **Q.** About his thumb. Look at the defendant's; you see the nail there is something smaller and a little more flesh on each side than there is usually at the thumb; did you ever notice that in Roger Tichborne?—Why that appears as if he bit his thumb-nails; I never noticed that in Roger Tichborne at all. **THE DEFENDANT:** If you look close you will see it is very different from that. **THE WITNESS:** Most decidedly I never saw that in Roger Tichborne's thumb." Then I wished to know a little more about his knowledge of the drill, and I asked the witness, "Did he show any inability to learn the drill?—My Lord, he knew his drill perfectly, to drill him on the table. **Q.** He knew it in theory?—In theory. **Q.** How, when he came to put it into practice?—When he was put on a horse he knew nothing about it. As soon as he was put on his horse he seemed to forget everything about it. **MR. HAWKINS:** His voice as he spoke, how was that?—It was nothing but broken English. **Q.** Did he endeavour to give the word of command and find a difficulty in making himself understood?—I could not teach him to give the word of command. **THE LORD CHIEF JUSTICE:** What did that arise from?—From his broken English. **Q.** I mean did it arise, supposing he had been able to speak English, from want of

capacity, or so far as you could judge, from his inability to express himself?—From his inability to express himself. Mr. HAWKINS: At Portobello his rooms, I believe, were near yours?—Opposite mine. Q. Did it bring you together a good deal?—Very much, and he used to come into my room almost every night. Q. Did you discuss, among other subjects, military drill and matters?—Almost every night. I used to teach him in my room almost every night. I had little bits of cards with two troops, and used to teach him his drill in that sort of manner, and say, ‘Supposing you wanted to change front to the right, what would you do?’ and he would do it in a moment, or anything of that kind. I was adjutant of the regiment, and what was going to be done the next day on parade he would do perfectly well in the room, but the moment he got on his horse it was all gone.” This the witness ascribes in part to the difficulty Roger had in managing a horse; he could stick on a horse perfectly well, and could go across country; Colonel Bickerstaff says he was quite right there; but he had no hand upon a horse, no idea of humouring the horse’s mouth—what is called handling a horse. He could not get what is called a cavalry seat; he never could acquire that, or the art of using what they call the “aids,” making the particular pressure of the knee and managing the rein so as to direct the movement of a horse. Thus his whole time was taken up in trying to manage his horse; so that although he knew his drill, and could do it in theory on the table, the moment he got on a horse he was an inefficient, clumsy, useless officer. That is the substance of Colonel Bickerstaff’s evidence.

Next we have Major Foster, who was a young officer at the time Roger joined the regiment, and to whom he was handed over, when he first made his appearance before the colonel, to be introduced to the regiment. He tells us one fact which would lead us to think that Roger was not a man likely to develop into a very big man. He says he was so very slim, and his waist and hips were so small, that they were not sufficient to hold up his sword belt, and the tailor had to put hooks to his jacket to keep his sword up. He tells us he was so small that if it had not been for those hooks being attached to his jacket, the sword would never have stayed up. On being cross-examined he is asked, “Had Roger Tichborne dark brown hair?—Yes. Q. And had he bluish-grey eyes?—I cannot tell you the colour of his eyes, for they were generally full of tears. Almost always when I saw him he seemed to have such weak eyes—a sort of weeping eye. Q. Was he generally a delicate, unhealthy-looking man?—He had a woe-begone look; but I do not think he was unhealthy.” Then his attention was called to a photograph of Roger, with a view to the peculiarity of the thumb said to be exhibited in that photograph, but he said he did not see it at all there;



and, I must say, neither did I. Dr. Kenealy did not ask him whether Roger Tichborne had any such peculiarity. On re-examination my Brother Parry says: "Now, you have been asked about the thumb?—I never noticed anything about his hand. Q. Did you hear of it?—Never. Q. Did Roger Tichborne himself call attention to any defect, or to the peculiar thumb he had?—No."

Then he speaks about his singing French songs, and about his habits; and he says, "He was very *manière*, very much of a Frenchman, but a perfect gentleman. Q. Something has been said about his tendency to associate with persons below him in station; did you ever see any such inclination in him, or anything that induced you to suppose that he was at all fond of low or bad society?—Certainly not; quite the contrary." Then there is a good deal of cross-examination upon the subject of practical jokes; particularly the introduction of women into his room. But that belongs rather to a different part of this inquiry, and I will reserve the evidence until I come to that. Then Major Foster is asked as to this young man's intelligence: "Do you remember that, owing to his French accent, he had a difficulty in learning the words of command and the orders he had to give?—Yes; and not only that, but he had a difficulty in expressing himself generally, and, when he spoke, it was entirely using French idioms—English words with the pure translation of French phrases." He gives as an instance of his speaking like a Frenchman his saying to a young lady, "Do you profit by the fine time to make a promenade?" "He used to speak in that way, translating French into English, even until the latest time he was in the regiment. Q. Can you tell us, while you knew him, that he had studied his duty?—He did, most conscientiously; and we, of course, being all young at that time, did not really appreciate the value of his industry, in trying to perfect himself in things. We were so struck by his apparent want of information and intellect that we attributed it to its being designedly done, that his education had been neglected, and so we arrived at the way that he spoke as he did. However, one day we were talking about the army examinations, and I said, 'Why it must have been a perfect farce for you to have passed the examination, apparently as ignorant as you are; it must have been absurd?' And he said, 'Oh, no, it was not; it was very difficult.' And I said, 'How was it difficult?' and he said, 'They did ask me many difficult questions.' I said, 'Tell me one?' 'They asked me who Charles the Fifth was?' 'And did you say who he was?' 'Yes,' he said; 'and what were the principal battles fought during his reign?' He told me that and a great deal more than ever I knew, my Lord; and I appreciated it. I did not ask any more. Q. That you remember most perfectly with him?—That I remember most perfectly. Q. From

your observations of him and conversations with him, do you believe he had conscientiously studied his duties as an officer?—Most certainly. The LORD CHIEF JUSTICE: That he was not a mere ignoramus?—No, he could not have been—at least he satisfied me he was not.” On cross-examination he was asked if he had any recollection of the battles of Charles the Fifth which Roger mentioned, and he says: “Yes, he mentioned the battles of Pavia and Verona. Q. Two of the battles in which Charles the Fifth was engaged he mentioned?—Yes. The LORD CHIEF JUSTICE: I do not understand they were limited to two?—No, those two struck me forcibly. I am sorry to say that I never read the history of Charles the Fifth.”

Next comes Major Jocelyn, an officer who tells us he was captain of the troop in which Roger was placed when he first joined. He describes him thus: “He was about five feet eight or a little better; but I should say scarcely five feet nine; very sallow, with unwholesome-looking complexion; very slight and thin, narrow-shouldered, and hollow-chested—in fact, what we should term a weed of a man, with dark brown hair, which was very straight, and seemed to come down a great deal over his forehead. I do not recollect anything particular about him, except that I recollect he had a very good hand—what we call a Norman hand.” There has been a discussion about this, whether this should be a “Norman” hand or a “normal” hand: however, the witness described what he meant—“a sinewy, narrow hand, with long fingers: I have very often seen his hand, and the shape of it is quite in my recollection. Q. Did you ever see or notice any peculiarity in either of his thumbs?—Oh, no, never. Q. Do you recollect anything about his walk?—Nothing very particular, except that he was what we say of a horse, a bad goer. He shambled along; in fact, he was not the sort of man you would pick out for a dragoon. Q. How did he speak?—He spoke very bad English; in fact, I should say, from his idiomatic method of expression, that he thought in French and translated it into very bad English. Q. Being the captain of the troop to which he was appointed, I suppose you saw a good deal of him?—A great deal of him for a considerable period. In cavalry we have a duty which is called attending mid-day stables, to which the officers go, or used to go in my time, a little after eleven, and remain till one. After we had seen all was right, and received the reports, we had literally nothing to do, and I used generally to sit upon a stable bucket at the stable door and smoke a cigar, and he used to lie on a litter at my feet, and I used to try to teach him English.” On this evidence of Major Jocelyn the learned counsel for the defendant founded some very strong remarks. He sought to represent this as the species of life which these officers always led, the one sitting at the stable door on a bucket smoking a cigar, and the other, as he was pleased to call it, “lying as a dog at his feet;” the

real fact being that what Major Jocelyn described occurred only during the superfluous time they had to remain at the stables, the time being longer than was necessary to discharge the duty to be performed; and after that was done, he (Major Jocelyn) sat down and smoked his cigar, and tried to teach Roger English, and Roger took the first bundle of straw or hay and sat upon it and tried to learn; and that is perverted into the extravagant statement of "lying like a dog at his feet," and you are asked to take that as a sample of the life the officers led. Major Jocelyn was further asked about his walk; he said he had a shambling walk. "How do you more clearly describe it?—I do not know how to describe it. I said he was a bad goer. I think that was my professional experience. Q. Did he kick out one of his legs?—I do not recollect anything about his kicking out one of his legs. Q. You do not recollect anything about his legs?—Not about kicking; I recollect he had thin legs. Q. I want to know what you mean by a shambling walk?—Why, he did not lift his feet and go free. He went as if he was tied by the leg. Q. As if tied by the leg?—Shambling along; he did not lift his feet. Q. Do you remember a movement that he had in his eyebrows?—I never observed it."

We next come to an important witness, Captain Polhill Turner, who was captain of the troop into which Roger was afterwards removed. Roger Tichborne was with him at Dublin, at Cahir, and lastly, from April, 1851, at Clonmel, when he was first attached to his troop, and he so continued until the witness left the regiment in February, 1852. At Clonmel, while on detachment, he says they were very much thrown together. The witness went to Waterford in August, 1851, and was followed there by Roger in the October of that year. He is asked to describe him, and he says, "He was a remarkably thin, slight, angular-looking young man, with narrow forehead, narrow head, narrow-shaped face from the lower part; very long, pointed, sharp chin, very long jaw, particularly so at the lower part, and coming round with a sharp point to the end of the chin, particularly sharp. My recollection is that the chin was long, and that the point of the chin was sharp. Mr. HAWKINS: Was there any peculiarity at all about his face other than what you have told us?—The complexion was exceedingly sallow, and of a dirty-white colour, which made his hair look very dark. Q. As to his walk, first of all, was there anything particular about his legs?—He kicked his legs out in walking. Q. As far as the leg itself was concerned, was there anything wrong about the shape of it?—He turned his legs out; kicked them away from him when he walked, pushing his shoulders right and left, a sort of half swagger." On cross-examination he is asked, "Was Roger Charles Tichborne clumsy and awkward in his walk?—No; he walked rather lightly. Q. Did he walk like ordinary



people, without any peculiarity whatever?—No; his walk was singular: He kicked his legs about very much, and swung his shoulders.

*Q.* Did he kick one leg about more remarkably than the other?—No.

*Q.* Were both equally kicked about?—I never remarked anything of the kind. *Q.* There was nothing more remarkable in his left leg than his right?—No, he kicked them about in a sort of shuffling way—left and right. *Q.* He kicked them upwards?—I never remarked anything—

*Q.* You were in the habit, of course, of dining with him at mess?—Yes. *Q.* Did you also notice the movement of his eyebrows when he was particularly excited in conversation. His eyebrows went up very often; when he was in conversation or animated he elevated his eyebrows.” Then comes a question about the thumb, and he says, “I did not remark anything whatever about his thumb in the regiment, though I have often seen his hands in dealing the cards to me.” It appears that when at Clonmel by themselves, Captain Polhill Turner and the defendant used to spend part of the evening in playing *écarté*, and that, you know, brings two people very close to one another, and they have the fullest opportunity of seeing one another’s hands while the cards are being dealt, and the witness says that though he constantly saw his hands when dealing the cards, he did not observe any peculiarity.

When they had been a short time at Clonmel, the troop was ordered to Waterford, and Captain Polhill Turner, who had the command of it, of course took it there. For some reason, which has not been explained, Roger Tichborne remained at Clonmel, and was attached to the troop which came to Clonmel, to supply the place of Captain Polhill Turner’s troop which went to Waterford, and Roger did not follow to Waterford until the month of October. He then went on to Waterford and rejoined his own troop. Captain Polhill Turner married one of the daughters of Sir Henry Winston Barron, who has a residence close to Waterford called Barron Court, and, of course, being on the eve of marrying that young lady, he was intimate at the house, and introduced Roger, who went there several times—a material fact in this case, as one of the facts connected with Roger Tichborne’s Irish life as to which the defendant afterwards came to be cross-examined—“When I went on leave,” says the witness, “he was there several times also. The LORD CHIEF JUSTICE: Do you mean a casual visitor, or staying in the house?—A casual visitor.” While at Waterford he was taken with one of those seizures, the exact nature of which I do not think has been quite satisfactorily explained, and they bled him again—a circumstance material when we come to the fact of whether the defendant exhibits marks of bleeding. The witness is asked as to the military capacity of Roger. “He was not very bright,” he says, “but he knew enough to get on on a field day; he knew a little of the drill, but he was not a good officer.

He never commanded a squadron; he was never used as squadron officer. I think he knew his troop drill; he knew it fairly well.

Q. He spoke, we have heard, with a French accent?—Entirely so.

Q. Was that an impediment to him?—Decidedly: the men could not understand what he said, and laughed at him. The sergeant-major used to tell me; and say if they did not take any notice he might get over it. Q. You used to have that complaint from the sergeant-major?—The sergeant-major used to tell me the men constantly laughed at his word of command and way of drilling; in fact, he could not speak English at all. Q. He used to say ‘ve’ instead of ‘we.’ ‘Ve will do so and so; ve will take the promenade together to-day.’ He used to talk in that foreign way, and used to shrug his shoulders up.”

Then there is another important witness, Captain Manders, who had been adjutant of the regiment fourteen years, and who was paymaster at the time Tichborne joined. Their rooms at Portobello were on the same landing, and it was the same at Cahir. He is asked, “Have you had opportunities of seeing and hearing Roger Tichborne?—I have had more opportunity, perhaps, with Roger Tichborne than with any other officer, because I do not recollect being similarly placed with any other as I was with him. When we marched to Cahir in April, and when he came back to Cahir to headquarters, I happened to be placed on the same landing with him. I was on the same level, and he and I occupied the same top quarter, and we were there from April until the following March, the last day of March, or the 1st April, I am not positive which, when he left to join a troop that was going to Clonmel. All that period he was in the adjoining room to me, continually coming in and out to me. I very seldom went into his room, because he was so much younger than I; but he frequently came to me, and often on military points he used to question me. Knowing I had been adjutant so long, he knew I was acquainted with all the duties, and called on and applied to me frequently for information.” Further on he is asked, “You say it was no part of your duty to attend to Roger Tichborne’s military instruction, but did you from time to time have opportunities of seeing what progress he made?—I was constantly about the barrack yard. He was a young man I got very fond of, and used to take a very great interest in him. Q. Did he make progress with and learn his duties as a young officer?—Yes, but he was not very sharp, and laboured under the very great disadvantage of not understanding the language thoroughly. Q. Did he apply to you from time to time for instruction in matters, and to explain matters to him?—Yes, frequently. Q. Did you from time to time give him the explanations he required?—I always felt very happy to do so. Q. You say he was not very sharp: did he, as far as you observed, understand?—Well,

he was able to command a troop in the field tolerably well. *Q.* Was he familiar with the expressions and words of command I have called attention to?—Oh yes, he was perfectly master of those simple things.” On cross-examination he is asked, “As a military man, would you call Roger Tichborne an efficient officer, or rather the reverse?—Well, he was not an efficient officer, but he was a man that made wonderful progress during the time he was in the regiment.

*Q.* Was not he very often making mistakes in the word of command, and things of that kind?—In the early period he did. *Q.* And did not that continue for a long time?—Well, in the cavalry service, if a man is not prompt he is not worth a farthing for a cavalry officer; therefore, a man who could not express his word in a second always appears at a disadvantage, and that was a disadvantage he laboured under. It was not that he did not know, but that he could not utter what he did know. *Q.* It was not that he did not know, but he was not prompt and ready to bring his knowledge into action?—The necessary word. *Q.* The necessary knowledge?—No, I think he had the knowledge, but he could not express that knowledge. *Q.*

He had the knowledge, but was not able promptly to express that knowledge at the time it was requisite?—Yes, that is what rather kept him back. *Q.* And in consequence of that he very frequently made blunders which were the source of amusement?—No, I will not say a source of amusement, because a man of that sort is more pitied; there was that generous feeling towards him in the regiment that they were more sorry for him than pleased at his doing so. *Q.* At all events, he frequently made blunders?—Occasionally. *Q.* He occasionally made blunders?—Well, I do not call it a blunder, because he did not utter anything. He hesitated; he did not appear a prompt officer.” On re-examination he is asked, “Did you find, from your conversations with Roger Tichborne, that he made progress in his drill and military knowledge?—I think he made very great progress, and had he been a strong man, I think he would have made a good officer eventually. *Q.* I understand you it was not ignorance, but want of expression?—Not at all; he was by no means an ignorant man, but a nice, gentlemanlike man in his manners. *Q.* I mean in knowledge of his duties?—A fair knowledge—much above the average. *Q.* Much above the average?—Yes. *Q.* Above the average of young officers?—Yes, both in knowledge and intellect.”

Then he goes on to state that which, if true, and I am sure he would not tell us what is not true, would show that this young man was not the idle creature the counsel for the defendant sought to represent. Dr. Kenealy asks: “You tell us Roger Tichborne was very fond of reading, do you know what books?—Well, not light books generally; not what you would call novels; he was not fond of reading novels. *Q.* What books did you see him read?—I cannot tell you,



for I never interfered. *Q.* You do not know what class of books he read?—I know from his conversation that he was a young man more fond of classical and historical knowledge than light reading. *Q.* Can you tell me the name of any classical or historical book you ever saw him read in your life?—I cannot at the present time.” On re-examination Mr. Hawkins asks: “You have been asked whether you could specify any books you have seen him read. You have told us the character of his reading, I may ask whether that was derived from conversations?—Yes, exactly; he was a man who never talked on trifling things: he was very fond of history indeed, and used to make allusions to old authors, and that sort of thing; he was also very fond of dogs, horses, and hunting, and a great deal of his conversation was about hunting; but he did not read trifling books. *Q.* Do you remember any conversation with Mr. Tichborne on the subject of books he had read that comes back to your mind?—No, but the impression on my mind is that I never heard him talk anything about those light publications—always something of a more serious nature. *Q.* But do you know as a fact that he read a good deal?—I thought he was a very great reader indeed, for he spent most of his mornings, when not at drill, in reading and smoking. If you went into his room you would find him in his easy chair with a book in his hand. *Q.* Would you look upon him as a studious young man?—That is my impression.” I think Captain Manders must be mistaken in one respect. We know Roger Tichborne did read novels—we know of what sort too; we have heard a great deal about the novels he occasionally read. But still a man may read books of light literature—sometimes novels of a higher class are a very interesting sort of literature—and yet study more serious things; and this evidence certainly goes to show that although this young man may have read books of that description, and some of them of a questionable character, he had a taste for more serious works and appreciated them. The witness is further asked: “Did you see much of him at Cahir off duty?—Yes, we used to ride and drive together a great deal in Cahir. He had rather a taste for antiquity; he was very fond of looking at old castles; and having a little inclination that way myself, we used to ride together. Ireland is full of old ruins and things of that sort, and he seemed interested in them.” As to his habits, Captain Manders, as well as the other officer who was asked on the subject, says he never saw him drunk. “You had opportunities of seeing him, you dined with him every day?—Not every day: he sometimes dined with me. I was an honorary member of the mess, but I did not dine every day, in fact I did not dine very often.” But whatever opportunity he had he says “he never saw him drunk.” “Did you ever see any tendency to keep the society of his inferiors rather than his equals?—No, never. *Q.* He never exhibited that at all?—No, he had not that defect.

*Q.* Was he liked among his officers?—Yes, I do not know any young man more.” When asked about the tricks played on him, he says, “I do not know that he experienced them more than any other; they all have to go through that ordeal, and if they take it good-temperedly they are soon dismissed, but if they show ill-temper it is carried on.” With regard to society in Dublin, which is another subject on which the defendant was cross-examined, he says, “My impression is that he mixed in the very best society in Dublin. I have met him at levees, and at St. Patrick’s Ball, and at Sir Edward Blackeney’s, at the Royal Hospital; but not much in private society. *Q.* But from your conversations with him did you learn whether he mixed much in private society?—Well, I remember him coming one evening in uniform, and he said, ‘I am afraid I am going out too often,’ and I said, ‘Well, you are going to a place where you will not have that to complain of, and therefore you had better enjoy yourself as much as you can where you are.’ I did not think the young man was doing anything that was unnatural to his age.”

I now come to an important matter—important as one on which the defendant was examined, and as to which according to this evidence he manifested a very singular want of knowledge on the part of an officer. I refer to the constitution and strength of the regiment. Captain Manders was asked as to the strength of the regiment: “How many men strong was the regiment?” He answers, “The establishment of the regiment is frequently altered, but it stood for very many years at six troops of forty-five horses and fifty-five men, and if you multiply that by six it will give you the number of what it was for many, many years. The LORD CHIEF JUSTICE: Was that about the number during the whole time Roger Tichborne was in the regiment?—Yes, about the number.” Then with reference to a squadron Captain Manders gives us this information: “What is a squadron?—It is composed of two troops. Any two troops brought together form a squadron. The regiment, when out, formed three squadrons. A regiment contains three squadrons, and two troops make one squadron. Mr. JUSTICE MELLOR: Is a troop ever called a squadron?—The commanding officer can make it so. For instance, in Ireland, there are seldom more than three troops together, therefore, to form them into two squadrons they break up one troop and divide with the other two; but that is merely for drill purposes. *Q.* But, I mean, is there any instance in which it is the same?—No.” Then Mr. Hawkins asks this question, “Would anybody who had been in the regiment, or knew anything about it, call a troop and a squadron the same?—Certainly not.” Then he is asked the meaning of the word *serre-file*; of close and open order; telling-off a squadron; and military matters of that kind, with which I do not think it necessary at present to trouble you. With regard

to personal appearance, as this witness had every opportunity of knowing this young man, his evidence may be material. He says, "His hair was very dark brown indeed, perfectly straight, and was brushed close to the head, parted on one side rather, and the front part of it was rather longer, and very frequently, in shaking his head, it would drop on his forehead. He had a very straight forehead, longish face, becoming very narrow indeed towards the chin. His eyes were a pale blue, or approaching a grey; but a pale blue, I think, was the nearest description of it. He had a very small moustache, no whiskers, a sallow complexion, neck rather long, shoulders very narrow and sloping, chest also very narrow, limbs slight. Mr. HAWKINS: Do you remember his walk?—Perfectly.

Q. Was there any peculiarity about that?—The peculiarity I always attributed to it, was general weakness. I do not think there was malformation of his limbs, but he walked like a delicate man, which he was, rather; and turned his feet out when walking.

Q. Was there any peculiarity at all about him that you remember beyond the description you have given us?—He was altogether a very delicate-looking young man, as far as appearance went; I should say, not the sort of a man to endure the hardship of service as a military man. Q. I do not know whether you recollect his ears at all?—I do not exactly, but I rather think they were large ears.

Q. Do you recollect whether there was any peculiarity of thumb?—None; I cannot recollect it at all. Q. Did you ever hear of it at all?—No, I never heard of it.

The LORD CHIEF JUSTICE: Or saw it?—I never saw any." Then my Brother Mellor says, "You spoke of him as being very narrow-chested?—Very narrow-chested.

Q. Now, the drilling he had to go through, would that have a tendency to develop the chest?—Decidedly. Q. When you last remember him, had there taken place any sensible development, so that he had changed from being a very narrow-chested into a more open-chested man?—Well, he was altogether better set up. He was such a weakly man before, he did not make use of his limbs as generally men do. Q. You heard some say he was knock-kneed?—I think he was as perfect as any could be, but his general weakness made him have that awkward appearance. Q. Did he present the appearance of a narrow-chested and sloping-shouldered man?—Yes; we had epaulets at that time, and they used to fall down his shoulders, they would not keep in place."

Then I asked him as to the twitching, "Did you ever observe any motion of the eyebrows?—I have when Roger Tichborne got warm in conversation, as if the skin moved here a little over the left eye. I have named that to several of my brother officers, but they did not seem to know it. Q. Was there any nervous twitching of the eye?—Not of the eye; it was the skin of the forehead over the left eye; I have just seen it move a



little in that way. MR. JUSTICE LUSH: Over the left eye?—Over the left eye. The LORD CHIEF JUSTICE: You say a little, anything very marked?—No; because it was only when he had a difficulty of expressing what he felt. I suppose it was a nervous sensation.” Now this seems an explanation not unworthy of attention. Here is a man who speaks in English and does not think in English—he thinks in French, and has to clothe the idea which first presents itself in a French form in an English one, and the word will not always come at the moment he wants it, and that would naturally produce a nervous sensation, and it is extremely likely this again would cause some movement of the forehead. We know how people contract the brow when thinking; you see one person’s brow wrinkle under mental action; while, on the other hand, some persons do the reverse—they look up, and throw the forehead upwards, as if they were looking to catch something from the air, and there is some corresponding movement of the forehead; some contract the brow, some raise it, according to the habit they may have acquired; and it is quite possible that Roger may have exhibited some movement of the forehead when he has been under the influence of some mental emotion of that description, from the difficulty of finding words to express what was passing in his mind. The witness adds, “He was very deficient in expressing himself as an English gentleman, and immediately he got warm on any subject, he darted into French to explain himself.” He was asked, having heard the whole of the defendant’s examination and cross-examination, what opinion he has as to the defendant being Roger. “Q. You have heard the defendant examined and cross-examined?—Yes. Q. Were you familiar with the tone and character of Roger Tichborne’s voice?—Very much so, for I tried to argue against myself when in the presence of the Claimant if I could trace anything in the voice, and I could never succeed in doing so. Q. Then his voice, and the sound and tone of voice?—And his pronunciation of words was quite different. Q. You found nothing that resembled it in tone and sound and language of Roger?—No resemblance whatever.” He expresses a decided opinion that the defendant is not Roger.

Another officer is General Jones, who was colonel of the regiment in 1852, and who had become major in 1850; and he was at Cahir with Roger, where he says he was brought into closer communication with him, and they used to hunt and ride together. He seems to have had a liking for Roger, and says he took him over to the Liverpool Steeplechases. I remember that in one of Roger’s letters he mentions having come over from Cahir to see the Liverpool Steeplechases. General Jones is asked, “Have you a distinct recollection of him?—Perfect. Q. Will you give me shortly your recollection of his personal appearance?—I should say he was about

five feet eight inches, with drooping shoulders, narrow chest, and very slight, weak legs; hair dark and straight. *Q.* Had he any twitch at all of his eyes?—Not that I recollect. *Q.* Any peculiarity about either of his thumbs?—Not that I am aware of. *Q.* Now his voice—have you any recollection of that?—Yes. *Q.* And his accent?—He spoke with a French accent. *Q.* Was that so to the last of your acquaintance with him?—Yes. *Q.* As far as regards his habits and manners, was he shy, reserved, or otherwise?—I thought rather shy. *Q.* As regards the feeling in the regiment towards him?—He was very much liked. *Q.* Can you tell me what was his chief amusement?—I think he liked riding. *Q.* Riding about?—Riding about, I thought, chiefly. *Q.* You have seen him at balls?—Yes. *Q.* Was he fond of dancing?—Yes, I think he was. *Q.* Do you remember any ball being got up at Cahir whilst he was there?—Yes. *Q.* Got up by the officers was it?—By the officers and Mr. Butler, who was there. *Q.* Did you know his religion?—I knew he was a Roman Catholic. *Q.* I mean was he strict?—Very, I should say. *Q.* Did he regularly attend at the Catholic chapel?—He always went with the men, and if it was so wet that the men did not go, he went by himself. **THE LORD CHIEF JUSTICE:** Are you speaking of Cahir? **MR. HAWKINS:** That is where I understand you saw the most of him?—Yes. *Q.* Had the men far to go to the chapel at Cahir?—Nearly a mile.” Then he remembers his obtaining his lieutenancy; the fact, but not the date. “Do you remember his obtaining his lieutenancy?—I cannot recollect the date. *Q.* I mean to say, do you remember the fact?—Yes. *Q.* He had an examination to pass for that?—Yes. *Q.* Can you tell me where that examination took place?—At Cahir.” That is an important answer, because when the defendant came to be asked about it, you will find that he stated that he had gone to Dublin to be examined.

On cross-examination the question is put to him, “You have been asked about a twitch of the eye; did you notice a twitch of the eyebrows or movement of the eyebrows of Roger Tichborne?—I think I have. **THE LORD CHIEF JUSTICE:** You think you have known it in Mr. Tichborne?—I think so, when he was excited, my Lord. **DR. KENEALY:** Had not he a habit when he was excited, or when he felt particularly interested in any part of the conversation that was going on, of moving his eyebrows up and down?—I cannot say that I ever remarked it. *Q.* What did you remark, as you have just said to the Lord Chief Justice, when he was excited?—Sometimes I have seen him slightly move his eyebrows when he was in conversation. *Q.* Up and down?—Yes. *Q.* And did you notice that on those occasions the greater part of his eye used to appear?—No, I cannot say that I did.” I should add that he was asked about

a man of the name of Holohan, about whom the defendant had spoken as of a gentleman who dined at the mess. “Q. You had a pack of harriers at Cahir?—Yes. Q. Where were they kept?—Just outside the gate—by a man named Holohan. Q. What was Holohan?—He kept a shop, billiard-rooms, and livery stables. Q. Did he ever dine at mess?—Never.” Dr. Kenealy, on cross-examination, suggests that it was another Holohan. “Now about this Holohan. Do you know what the Christian name of the Holohan you have been telling us about was?—No. Q. Are you prepared to say there was not a Mr. John Holohan, a gentleman at Cahir, who dined at the mess?—I do not remember a gentleman of that name. Q. I suppose you do not remember all the names of all the gentlemen in that part of the country who sometimes dined at mess?—I cannot say I do. Q. Several did dine with the mess, did they not?—Yes.” On re-examination he is asked: “Now as to Holohan, did you know any Holohan except the one who kept the shop?—I never heard the name except of that one man. Q. To the best of your belief, was there any one except that one man?—I should say certainly not.” Now the defendant had said, with regard to Major Phillips, that he used to get Major Phillips to let him off his riding drill by giving him bottles of brandy. Major Phillips is dead, and as it is rather a reflection on a man who had a duty to perform as the riding master of the regiment, to say that he allowed a young officer to escape from his drill by being bribed with brandy, General Jones having been so long in the regiment, and having had the command of it, I thought it right to the memory of Major Phillips to ask this question: “You were in the regiment, I think you have told us, for thirty-seven years?—Yes. Q. How long was the late Major Phillips the riding master?—He was there when I joined, and when I left, when we were going to the Crimea in 1855. Q. Had he risen from the ranks?—No, he was a cadet at St. John’s Wood. Q. You had an opportunity of knowing him?—Yes, very intimately. Q. What were his habits as to sobriety?—He was a sober man, a man who used to take a great deal of exercise, and eat a good deal. Q. Was he a man who indulged in spirits—brandy?—I never heard of it, and I do not believe it.”

Then we have another of these officers, Major Bott, a young officer at the time Roger Tichborne was in the regiment. He joined at Cahir in 1851. Roger was at Clonmel then, so he did not see anything of him. But when the regiment returned to Dublin he became intimate with him, and was on very good terms with him. He describes him as “slim, pigeon-breasted, with dark, perfectly straight hair, and light blue eyes—light blue or grey. Q. How did he walk—what was his walk?—Short, quick steps. Q. Was there anything, as far as you know, about his legs?—Nothing peculiar, no pecu-



liarity. *Q.* As far as you observed, was there any twitching of the eye?—He had a way of throwing back his head when his hair fell over his eyes. *Q.* But beyond that?—Nothing that I observed. *Q.* Did you observe, or know of, any peculiarity or defect in either of his thumbs?—I am sure he had not any.” Then he is asked to look at the defendant’s thumb. “Are you prepared to swear you never saw that peculiarity in Roger Tichborne?—Will you let me see the other thumb? (the defendant held out his other thumb). I am quite prepared to swear it. *Q.* You never did?—I never did. *Q.* Have you such a distinct recollection of his hand—his left hand? Perhaps not such a distinct recollection; if it had been there I think we should have noticed it. *Q.* You have no recollection of it?—No.” It occurs to me that there was an incident with regard to Major Bott which Captain Polhill Turner spoke of. He said, “Major Bott came over one evening from Cahir Barracks to Clonmel, and after dinner—we had been together most of the evening—we went into Tichborne’s rooms, and I left Major Bott and Mr. Tichborne together, and I went into my own room. Shortly afterwards I heard a tremendous disturbance, and saw Mr. Tichborne running out into the passage very excited. I had heard a noise on the staircase, and when I opened the door and looked out I saw a file of the guard with helmets on standing in the passage, and Tichborne dancing about. I asked him what was the matter. He said he was going to put Bott under arrest. I do not know what for, I was not inside; I did not see the occurrence. I told him to go to his room, and consider himself under arrest until I released him. The next morning I released him, it was only a joke. *Q.* He was going to put Major Bott under arrest, and you had him put under arrest?—I had him put under arrest myself. He had no business to put Bott under arrest.” He complained of some practical joke played upon him, got excessively angry, and called for the guard, and was going to put Bott under arrest which he had no business to do. A question was asked of the defendant as to whether he remembered the circumstances, and he did not, and it is in that point of view only that the evidence on that matter is at all important. Major Bott, why I know not, was not asked anything about it.

Then there is an officer of the name of Betty, who did not join the regiment until it was at Canterbury, and who also gives his opinion with regard to identity. The only important thing to which he speaks specifically is as to the movement of the eyebrows. He is asked: “Did you notice that he had a movement of his eyebrows when he was interested and excited?—No. *Q.* You never noticed that?—I never noticed that.” So it was not strong enough to fix itself on his mind.

Those are the officers we have had as witnesses, and who deny the

identity of the defendant with their brother officer Roger Tichborne. To their evidence must be added that of Mr. McEvoy, which I shall come to presently. Next comes a man of the name of John Irwin, who was the son of old Irwin, so many years the mess waiter of the regiment (whose name you remember Captain Fraser told us the defendant was unacquainted with). This man says he used to assist his father and wait upon the officers at mess, and he knew Mr. Tichborne and waited upon him all the time he was there; and he declares that the defendant is not the least like him. Upon cross-examination he is asked some questions with regard to the twitching, and the knees. "Did you ever notice that Roger Tichborne was in the habit of moving his eyebrows up and down when he was animated or interested in conversation?—No." Then he is asked: "Have you a distinct recollection of his walk?—Yes, a very shuffling walk. Q. Do you know what an in-kneed man is?—Yes. Q. Was he in-kneed?—Well, I could not say, but he seemed inclined to walk on one side, but I do not think he was what you would call a knock-kneed man." Again he says, "I could not say he was knock-kneed. He was particularly one-legged when he walked, he seemed inclined to be 'in-kneed.' Q. It is one thing to be 'in-kneed' and another thing to walk from weakness or any other cause so as to have that appearance?—He was a gentleman who was weak from the hips, if you understand. Q. Weak from the hips?—Very narrow he was from the hips. Q. When standing, as you must have seen him, upright in the mess-room or the barrack-yard, was he straight or was there any inclination anywhere at the knee?—In the way he walked there was, but I don't know when he was standing; he did not seem inclined to be so when he stood still. Q. When he stood straight he did not show anything of the kind?—No. Q. When he walked there was that inclination?—Yes." Then he is asked, "You have seen his hand very often at the mess-table?—Yes. Q. Did you ever observe any peculiarity about the thumb?—No. Q. You had opportunities of seeing?—Yes. Q. And you never did see anything?—No, I did not." Then he is asked to look at the defendant's thumb, and he does so. "Did you ever see anything like the defendant's thumb about Roger Tichborne?—No, I have never seen anything. Q. But do you see any peculiarity there?—No, I do not. Q. Do not you see that the nail is shorter?—Yes. Q. Did you ever see anything of the kind about Roger Tichborne?—No." He further says he was a narrow-chested man, very slim, with very thin legs. Then one of the gentlemen of the jury asks, "Whenever you saw Roger Tichborne walk did it ever occur to you that he was knock-kneed or in-kneed?—No. Q. You never thought such a thing?—No; only a shuffling way of walking."

Hanrahan, who was trumpet-major, was the next witness called.

He was asked about the eyebrows. "Did you notice a habit he had of moving his eyebrows when he was in conversation?—I did not." Perhaps the trumpet-major would not be brought very much in contact with an officer beyond seeing him when on duty. He is asked, "Did you notice that he was in-kneed at all?—No. Q. As well as you remember, did he walk perfectly straight and well?—His walk appeared to be weak; he turned his toes out in walking. Q. Did it appear to you that he turned his toes out in consequence of some peculiar formation of his leg?—Of the weakness of his leg. Q. The weakness of his leg made him turn his toes out, is that what you mean?—Yes."

Then Shepherd, who was a lance-corporal, and who saw a good deal of Roger during the time he was under drill, says, "He was a poor, care-worn-looking young man. His hair was perfectly straight, not in the slightest degree tending to curl. Q. Was there anything else that you remember as particularly striking about him?—No, not particularly; he was very thin in the legs. Q. But as far as the shape of the legs went?—Nothing more particular than another man. He appeared to be weak on his legs at all times." This witness had had an interview with the defendant, and he was asked his opinion as to whether the defendant is Roger or not; and his answer was, "Well, to the best of my knowledge and belief he is no more Mr. Tichborne than I am. When the defendant came to Wincanton"—the witness had seen him there—"his hair was turning up, inclined to curl. Roger Tichborne's was straight, and never would curl, unless curled expressly with the curling tongs. Mr. Tichborne was of such a structure that, I should think, had he been fed for the purpose and lived to the present moment, he could never be the man that that man is there—that is my opinion."

Then Lockwood, a private in the regiment, is called, and swears that he does not believe in the identity of the defendant. In cross-examination he is asked, "Was there anything awkward in his walk?—Yes, he used to turn the knees inwards. Q. And the result of that was, when he walked, he walked in a peculiar manner?—Yes." Then, "Used he to move his eyebrows up and down a good deal when he talked?—I did not take much notice of it; I am not in the habit of staring people in the face. Q. You never noticed it?—I never took particular notice of it. Q. I am not talking about particular notice; are you prepared to swear you never noticed it?—I am; I swear I never noticed it."

The next witness, Nelson Parker, was a recruit when Roger joined, and went through the foot and horse drill with him, and had to engage with him with single-stick and lance, which gave him the opportunity of noticing Roger's appearance; and he is asked whether there was anything that impressed itself on him, and he says, "He



had a melancholy, long, thin countenance, not particularly expressive, sickly looking, unhealthy looking. *Q.* Was there anything about his ears? Did you notice his ears sufficiently to say what there was?—I have a strong impression that his ears were rather small, not these large ears the same as what the defendant's ears are; I have noticed the defendant's ears on many occasions since he has been on this trial; my recollection of Roger Tichborne's is—they were entirely different. I should say adherent; that is my strong impression. *Q.* What do you mean by 'adherent'?—Adherent at the bottom to the face. *Q.* What is called the lobe?—Not the immense large ears charged with something—I do not know what." I suppose he is referring to the lobe, though he does not know what the word is. As to the voice he is asked, "Did you notice anything in his giving the word of command? Was there anything noticeable?—The only thing noticeable was, he said his word of command more like a Frenchman than an Englishman; on that account the men often used to smile at it." About Roger's knees he gives this strong statement, "I am perfectly certain that Roger Tichborne's knees, or his legs rather, were as straight as a yard-stick, and as thin nearly." On cross-examination:—"Were his legs strong legs?—No; he appeared to be rather weak in the knees, bent forward in the walk, turned his toes out. *Q.* Was not there a peculiarity arising from that cause in his walk?—A sort of jerking; he was not a good military walker. *Q.* Did you notice about his eyes or eyebrows whether there was any twitching?—No, there was no twitching in Roger Tichborne's eyes or eyebrows. *Q.* No peculiar movement at all?—Nothing to the extent we have heard; nothing of this great twitching business. *Q.* There was some twitching, but not to the extent mentioned by some witnesses?—No twitching. *Q.* No movement at all?—Certainly not, to the best of my recollection. *Q.* I thought I heard you say a moment ago, something about 'to the extent mentioned;' what do you mean by 'to the extent mentioned'?—I have heard it said that Roger Tichborne had a twitching in his eyes, and I have read the reports in the papers of what the witnesses on the other side gave in their evidence. *Q.* You did not notice it?—No; from my experience of Roger Tichborne there was no such thing as a twitching. *Q.* You say his ears were large?—The LORD CHIEF JUSTICE: On the contrary. The WITNESS: No; I say the defendant's ears are very large. When I come to compare the two ears my impression is Roger Tichborne's ears were small and thin—not particularly small, but adhering to the face at the bottom; that is my recollection."

Another witness is Withers, who was servant to Major Phillips, the riding-master, and he, too, disbelieves in the identity of the defendant. On cross-examination he is asked, "Do you remember

that Roger Tichborne was in-kneed in his left leg?—He had a peculiar walk, not exactly in-kneed, but slightly. **THE LORD CHIEF JUSTICE:** Slightly what?—Slightly in-kneed. **Dr. KENEALY:** Was it in his left leg; or was each of his legs slightly in-kneed?—Both a little. **Q.** Both of his legs were slightly in-kneed?—Yes. **Q.** When he walked, he walked in rather a peculiar way, did he not?—Yes, he used to lean forward a little. **Q.** Were you in his troop?—No; but he did duty in my troop on one or two occasions. **Q.** At all events, you knew a good deal about him?—A great deal of him. **Q.** Did you notice he used to move his eyebrows up and down a good deal?—No; except as I have seen foreigners often do it. **Q.** Whether he did it as a foreigner or an Englishman, did he move his eyebrows up and down a good deal?—Slightly, I have noticed him. **Q.** Do you mean by slightly he did it slightly when he moved, or seldom?—Not very often. **Q.** When he was talking to you?—When he was talking to you, he moved his eyebrows up and down?—Yes.”

Charles Bacon, who enlisted in 1850, says that the defendant is decidedly not the Roger Tichborne he knew; and he says so “from his appearance, his voice, and altogether.” On cross-examination, he is asked, “You have seen him walking round the barracks?—Frequently. **Q.** Was he in-kneed?—From what I recollect I should say he would be weak in the knees—inclined to droop his knees forward. **Q.** Inclined to droop his knees forward; and did not that give an awkwardness to his walk as if he was a knock-kneed man?—Yes. **Q.** Do you remember whether you ever saw his hand ungloved?—Well, I should not like to say. **Q.** Did you notice that he had small feet?—Yes, small hands and small feet. **Q.** Did you notice, when giving directions in that way to a sergeant or non-commissioned officer at stables, he had a habit of moving his eyebrows up and down?—Yes.” Then he describes it by moving his own. “When did you notice the moving of his eyebrows that you speak of?—If a person was in conversation with him, as far as I can remember.” Then he was pressed on the subject of identity, and he says: “The defendant is decidedly not Roger by his appearance and voice;” and I ask, “Do I understand you to say that only because he has become so stout—is that what you mean?—Yes, I do, by his appearance. **Q.** But a man may get very stout, so as in that respect not to look like a man who was a slim man many years before?”—“Yes,” he says; “but Roger Tichborne, who was in the Carabineers, was never a man to make twenty-six stone weight; that I am certain of. He was what I should call a set man, to the best of my memory. He was a man, I should think, who would never get to twelve or thirteen stone, as far as my memory and thoughts would take me. **Q.** In those days he was a spare man?—A very spare man. **Q.** And had not, up to that time, any apparent tendency

to grow stout?—Not the least. *Q.* Still he may have grown stout. Now, about his hand: you say he had a small hand and foot; do you remember that?—Yes. *Q.* What sort of hand? A hand may be small and plump, or it may be small and lean; which would you say it was?—I should say it was the hand of a gentleman—a smallish, lean hand. *Q.* Smallish even for his size?—Smallish even for his size. *Q.* Because a small man may have a small hand; but do you mean, looking to his size, it was a small hand in proportion to his size?—Yes.”

Another witness is a man of the name of Peachy, a serjeant-major, and he speaks of Roger's general appearance, and from that general appearance says the defendant cannot be the man. He is asked about his walk, and says, “I think he had rather a peculiar walk, rather a shambling gait. *Q.* A peculiar walk, a shambling gait?—Yes, not smart on his feet. *Q.* Something wrong about his knee, was not there?—That I could not be certain of. *Q.* You made a movement just now?—I mean one of the knees bent forward when he was walking? *Q.* As if it could not bear the weight of his body?—Yes, but he had not much to carry. *Q.* That is why I am surprised. Did the knees bend forward or in, sideways?—I think rather forward than sideways. *Q.* They did not bend in a bit?—No, I think not.” Then he was asked to show by moving his own legs the sort of walk Roger had, and he did so.

Next we get a witness who did not belong to the regiment, but whose evidence is deserving of attention, and that is Major Kellett. He lived within a mile of Clonmel, and had married a daughter of the Rev. Mr. Morton, a clergyman at Clonmel, who was father of Captain Morton, in whose troop Roger Tichborne was ultimately placed, and through whom he became exceedingly intimate with the Morton family. This gentleman, Captain Kellett, was very intimate with the officers stationed there, and he has a perfect recollection of Roger. He is asked about his appearance, and whether he was fit for the work of a dragoon regiment, and he says, “I do not think he was a very well shaped fellow. *Q.* I do not know whether you mean in point of physique?—I think his physique was quite sufficient. *Q.* When you said ‘not calculated,’ one does not know whether you mean in a bodily or mental point of view?—I should say rather mental.” My Brother Mellor asked him, “Was he thin or stout, or narrow-chested, or otherwise?—Thin and narrow-chested; his legs particularly thin.” I asked him, “You observed his legs were particularly thin; did you ever observe anything else about them?—The way I observed his legs was seeing him in hunting dress; the tops of his boots were miles too big for his calves. *Q.* Was he in-kneed?—I cannot remember that he was particularly; he had not a very soldier-like mode of walking, but I do not remember his being in-



kneed." Then he says that the defendant is not the Roger Tichborne he knew. On cross-examination he is asked, "What is your recollection of Roger Tichborne as to his appearance?—He was very slight, and had rather a narrow, sallow face; very dark hair, limp hair, without a curl; I remember his dividing it very much on the side, and under his forage cap a good deal of hair, such as it was, used to come out. Q. A kind of forelock?—Something of the sort. His legs were very thin; he was narrow-shouldered and narrow-chested. Q. What you would call a badly-made man?—Well, he was. Q. Did you ever know anything about his in-knee?—No, I cannot call it to my recollection. Q. Did you ever see him dressed in regimentals?—I have. Q. Was he not rather awkward about the legs?—He did not march like a man well drilled; but I do not remember anything about malformation. Q. You would call him a man not steady on his legs?—No. Q. Had Roger bushy eyebrows—thick eyebrows?—He had straight eyebrows, rather heavy. Q. Do you say his hair was darker than the defendant's?—Yes. Q. It was?—Yes. Q. Nearly black?—Yes, dark hair. Q. Was there any black in it, or was it simply having a blackish tint?—I would rather say it was dark than black. I do not like to say black, although it was very dark hair, because it might be very dark without being black. Q. Had he nice hands?—I do not remember. Q. Did you ever notice a nervous movement about his eyes?—No. Q. Never?—Never. Q. Never heard it made the subject of observation or comment at the mess in his presence?—No. Q. You never did?—No. Q. That you are distinct about?—I am distinct about it." Then he is asked about the Morton family, and says Mr. Morton had four sons and three daughters, and that the daughters were at home during the time Roger was there. That is only material as being one of the points on which the defendant was cross-examined, and his account does not appear to coincide with this gentleman's. It seems that the Rev. Mr. Morton, who was a Protestant clergyman, and Roger, who we know was a Roman Catholic, used to get into discussion on matters of religion. The defendant was asked about it in cross-examination, and he represented Mr. Morton as being a very "bigoted" man. Captain Kellett is asked, "Do you remember the frequent discussions on religious matters that the Rev. Mr. Morton had with Roger?—Yes. Q. Each stuck up for his own side?—Yes; but I remember it being said Mr. Morton was a bigot in religion, which I would like to take the opportunity of denying; he was not. Q. He stuck up for his religion?—Yes. The LORD CHIEF JUSTICE: Where was it said he was a bigot?—On the trial of 1871. It was rather an offensive word. Dr. KENEALY: You think that was an offensive thing, to be called a bigot in your religion?—I do. The LORD CHIEF JUSTICE: With reference to

those discussions about religion that took place between him and Mr. Morton, I understand they were conducted in a good-natured, friendly spirit on both sides?—Quite so. *Q.* Did Roger appear to hold his own?—I wanted to know the amount of intelligence he displayed in these discussions, and he says—“ Yes; he had a great affection for Mr. Morton, and he bore with a good deal. Mr. Morton used to jest about his going to confession, and that sort of thing—he always took it in the best humour. *Q.* The clergyman was the theologian, and would be more master of the field?—Of course. *Q.* On these occasions, when you have heard him talking on the subject of religion in these discussions, although he spoke with a foreign accent and a foreign idiom, did he seem wanting in language, or had he the means of expressing himself?—The means of expressing himself such as it was. *Q.* He was not wanting in facility of expression and fluency of diction?—No. I never heard him use an improper expression in any way during my acquaintance with him.” Captain Kellett having dined so often with him at mess and at his house, I asked him: “ You dined at the mess frequently?—Yes. *Q.* I also understood you to say he was at your house?—Yes. *Q.* Did he dine at your house?—Yes. *Q.* I want to ask, did you observe on these occasions whether he took more wine than gentlemen are in the habit of taking?—No. *Q.* You never saw him worse for liquor?—No. *Q.* On all the occasions you saw him?—On any occasion I met him.”

Gentlemen, there was another witness who, although not immediately connected with the Carabineers, was thrown into close contact with Roger Tichborne, namely Captain Villars Morton, who was a brother of Captain Morton, in whose troop Roger was for some time lieutenant. He made Roger’s acquaintance through his brother, when he first entered the army. He says he became thoroughly acquainted with him, and remained intimate with him throughout his time in Ireland, more especially on the occasion of the regiment being in Dublin. He speaks of Roger as being a most intimate friend of his brother—the most intimate he had in the regiment. He says: “ He looked up to my brother—in fact I think he was put to my brother’s troop to make a soldier of him if possible.” He is asked as to his recollection of him, and says, “ When I saw him first he was a very thin, slim young man, I suppose about five feet eight, with dark hair: of rather shy manners with strangers, though not so with people he was acquainted with. His eyes were dark, as far as I recollect; they gave you the idea of being dark eyes. His complexion was very sallow; his person very thin. *Q.* Do you recollect his shoulders and his chest?—He was a bad-chested man; bad shoulders and chest; longish arms and legs, very thin, without any muscle I should think. *Q.* How did he walk?—He walked very well, I thought; but he turned out his toes a little. *Q.* Was it an

awkward walk or not?—I could hardly call it an awkward walk ; anybody who turns out his toes very much does stand in this way.” Then he exhibited the way in which Roger used to stand. Then he speaks about his French accent, and says he spoke “ Quite French, quite foreign. Q. Do you remember whether in speaking he used French words or spoke French?—Occasionally he would say, ‘ What do you call so and so,’ mentioning a French word, ‘ what do you call it in English.’ The LORD CHIEF JUSTICE: In the midst of a sentence he gave you the French word and asked you the English word?—Asked how to express it. Mr. HAWKINS: You gave him the information?—Yes. Q. Have you a distinct recollection of the voice?—Quite. Q. The character of the voice?—A soft, low voice.” On cross-examination he is asked: “ Did he not walk awkwardly?—I would not call it awkwardly ; he walked peculiarly. Q. Did you ever notice a nervous movement about his eyebrows?—No, I never noticed it.” A question had been asked the defendant about Captain Morton’s chargers, when he said he had a remarkable charger, a “ roach-backed ” horse. Accordingly Captain Morton is asked, “ Do you remember your brother’s chargers?—Yes, very well. Q. Had they names?—Yes. Q. What were their names?—His first charger’s name was Shamrock, his second was Hawthorne. They were horses very well known to the regiment ; very handsome horses ; very much admired. Q. Were their names as well as the character of the horses well known?—Yes, very well known I should think. Q. Had your brother ever a horse that had a very hollow back—a roach back? Had he a roached-back horse?—No, never. Q. He had not?—He had a horse that might be called roach-backed, but he bought it in 1853 in York,” which would be after Roger left England altogether. “ He bought that in 1853 in York?—It was after the regiment was dismounted to go to India, he sold his chargers and had to re-mount himself again. He then bought a chestnut horse in York—a very handsome English horse. That might be called hollow-backed ; I should not call it hollow-backed.” He fixes the date of this as 1853, which would be, of course, after Roger left. But that was afterwards corrected, because he says it was when they were at Canterbury, and the regiment went to Canterbury in 1852. On this being pointed out, he says it must have been in June, 1852, that this roach-backed horse was bought. “ You said first 1853: you meant 1852?—1852. Q. But he had no such horse in Ireland?—No such horse in Ireland.”

A JUROR: It is clear he bought that in York. I saw the horse in York.

The LORD CHIEF JUSTICE: Then you would know whether it was really what is called hollow-backed.



A JUROR: I have seen the horse and seen the captain riding it.

The LORD CHIEF JUSTICE: Then he is asked this about the alleged peculiarity of the thumb, "You saw him?—A great deal of him. Q. You must have dined with him?—Yes, very often, indeed. Q. Did you ever notice any peculiarity about the thumbs?—Never. Q. Can you take on yourself to speak with any degree of certainty: I suppose you had opportunities of seeing, at all events?—Often enough. Q. Can you take on yourself to speak one way or the other?—No, I cannot, I never observed it. Q. Did you hear the defendant examined in court?—Yes. Q. Did you notice anything in his accent?—Yes, I noticed quite a different accent. Q. Would you call it a foreign accent?—No; I should call it a gruff English voice, very unlike Roger Tichborne's. The LORD CHIEF JUSTICE: No foreign accent in it?—No, none whatever."

There is another witness, Jeremiah Healey, who used to keep the Racquet Court at the Tipperary County Club at Clonmel. He says Roger Tichborne used to come there and play racquets a good deal when at Clonmel. He says the defendant is not the man. On cross-examination he is asked, "Of course, in playing racquets you had the opportunities of seeing how he walked. Do you remember noticing his being knock-kneed?—I think his knees turned in a little.—The witness stood in such a manner as to show what he meant.—Q. Allow the jury to see that?—I think he inclined in a little in that way (and he showed what he meant). He was a little awkward on his legs. Q. But was not he what they call in-kneed?—No. Q. Then what would you call it besides awkward; would it be in-kneed?—I mean they were a little loose. Q. You have pointed it out, and some of the gentlemen have seen you, would you say he was in-kneed from the position you stood in?—Yes, in-kneed, I mean. Q. That is what I am asking you?—Yes. Q. Then he was in-kneed?—Yes, a little. Q. About what height was he?—Between 5 ft. 8 and 5 ft. 9, I should think. Q. Do you remember that for his height and general character of his person he had a fair chest enough—a good chest?—No, I do not think he had. Q. What was the build of it?—It was narrow. He was small-shouldered, and a narrow man." Then, on re-examination, "Tell us in your own way what you mean?—I mean he was not tidy on his legs—that he was rather awkward. I have seen many better drilled officers, in my day, than him. Q. You have seen better drilled officers?—Yes; who walked better. Q. But as to the shape of his legs, you know nothing about that?—No; as well shaped legs as any gentleman I have seen. Q. When you talk about his in-knees, do you mean he was loose on his legs?—Loose. The LORD CHIEF JUSTICE: What do you mean? Explain in your own way what you mean?—I mean, my Lord, that

he was not tidy; he kept his legs rather spread out more than another. *Q.* Spread out?—Yes. In running the court you must run pretty hard at racquets; I noticed he would not run as tidy as myself after a ball. *Q.* But, supposing he was standing upright, did you mark then that there was anything in the shape of his knees different from other people's?—Yes, I would remark a little. *Q.* In what way, when standing up; just tell us?—I think something inclined to fall in a little."

Of the military witnesses whom I have been passing in review, some, you will have observed, speak generally as to the appearance of Roger Tichborne, and give us their judgment and opinion formed upon a comparison between their reminiscences of Roger Tichborne and what they have observed in the defendant, as regards stature and form, face, features, and voice. Some afford us information as to Roger Tichborne's habits and pursuits, his general knowledge and military progress. There are others to be mentioned who, in addition to this, having had interviews with the defendant, lay before you what passed upon those interviews; and that is brought forward, on the part of the prosecution, for the purpose of showing you that the defendant failed to know things which Roger Tichborne must have remembered, and which, if he were really Roger Tichborne, he would necessarily have known. I have already called your attention to similar evidence of other witnesses. There are the witnesses who speak of the interviews between the defendant and members of the Tichborne and Seymour families, the evidence as to which I brought before you in narrating the incidents which occurred after the defendant's arrival in England. You remember also the conversation which took place between the defendant and Mr. Gosford, and the instances spoken to by the latter of his want of knowledge on the various points on which he questioned him, or to which he led the conversation. There are a few such witnesses belonging to the military class, and it is necessary to bring their evidence more particularly to your attention. One has already come under your notice, namely Captain Fraser, who has stated the conversation with the defendant about the present which Roger Tichborne had made him, and the letter subsequently written by the defendant on the subject of the snuff-box. You have Captain Fraser's account of what happened on that subject of the snuff-box, and you must form your own judgment whether the defendant had any genuine knowledge about that transaction, or whether the knowledge he had was picked up imperfectly from some extraneous source. I am about to call your attention to other evidence of a similar character.

Mr. McEvoy, formerly an officer in the Carabineers, was induced to go and see the defendant at Croydon. He was acquainted with a Major Steelman, who had also been an officer in the regiment, though

not, I think, in Roger's time, and one day when Major Steelman was walking with Mr. Holmes, they met Mr. McEvoy, and Mr. McEvoy was introduced to Mr. Holmes, and having heard that Roger Tichborne had come back he said he should like to see the gentleman who called himself Sir Roger Tichborne, to see whether he was the real man. Upon which Mr. Holmes said he would make arrangements to that effect, and the result was that Mr. McEvoy received an invitation to go down and dine with the defendant at Croydon. He says, "When I expressed myself very desirous to see Roger Tichborne again, Mr. Holmes said to me, among other things, that it was a long time ago, and that no doubt he was a good deal altered, and that he hoped I would not come to any sudden conclusion with regard to him. I said I would examine him as carefully as I could, and tell him the result." A few days afterwards the witness received a very remarkable letter from a gentleman whose name has been so often mixed up in these proceedings, Mr. Guildford Onslow, who appears from a very early period to have made the identity of the defendant and his chances of success in the litigation he was about to enter upon a matter of betting speculation. There are people who will bet on anything, but when persons do bet they should be careful how they act in endeavouring to affect the event on the success or failure of which the bet depends. This is the letter, "My dear McEvoy—Oblige me and your own curiosity in going to Essex Lodge Croydon and calling on your old friend Sir Roger Tichborne who is living there, with one of your brother officers, and let me know what you think of him. I have got £600 on his being the man; mind and don't be misled by first appearances as he is so much altered from circumstances. I know I am as certain of him as I am of myself. Yours faithfully GUILDFORD ONSLOW."

Now if Mr. McEvoy, on going down and seeing the defendant, had come to the conclusion that he was the Roger Tichborne he had known in the Carabineers, of course in the coming litigation he would have been asked to be a witness for the defendant. What must one think of a gentleman who seeks to influence the judgment which Mr. McEvoy ought to have been allowed to form without any undue influence, by begging him to go and identify the man if he can, because he has got 600*l.* on his being the man? Indeed, it appeared afterwards that the same gentleman was interested in the result of the litigation to a very much larger extent. We know that his agent advanced 3,000*l.* to be repaid 6,000*l.* if the litigation of the defendant should be successful, and one cannot very well suppose that the agent would have advanced that sum of money unless at the instance of his employer. You may bet on anything you like. I do not know there is anything morally wrong in it, if you choose to devote yourself to that species of proceeding, though it often has the



effect of demoralising those who do devote themselves to it if they do so to too great an extent—but if you do make a thing the subject of a bet, as I said before, you must keep your hands clear of everything which can unduly affect the result. When I look at this letter, and the part which has been taken by Mr. Guildford Onslow, in exciting to the uttermost of his ability the storm and torrent of popular passion on the subject of this affair, I must say I think it would have been very much better if that gentleman had had no pecuniary interest in the result, which he has taken such unjustifiable means to insure. There it is, and you will now probably understand the motives which have induced Mr. Guildford Onslow to take so very active a part in this matter, and do so many things which I must say a sense of propriety should have led him to abstain from. These public meetings, as I have said on more than one occasion, are of the very worst example, as being calculated to interfere most seriously with the administration of justice; and a gentleman who had a pecuniary interest in the result should have been the last to excite all this amount of popular passion and prejudice on such a subject.

The defendant calls on Mr. McEvoy at his club, and afterwards writes to him as follows: “1st April /67. My Dear McEvoy. I called and left my Card at your Club on Friday and was sorry I did not have the pleasure of seeing you. Mr. Holmes told me, he had seen you on Saturday. I am very thankful for your kind expressions towards me. I shall have great pleasure if you could make it convenient to come and dine with me. at Croydon on Wednesday next. if not I will call on you any where you like to appoint. I am certain you will know me again when you see me and sympathise with poor Tich I remain my dear Ned”—Mr. McEvoy’s name being Edward—“yours truly R. C. D. TICHBORNE.” Mr. McEvoy being asked if he was ever called “Ned,” says, “I do not recollect it; I might have been called so once or twice. Mr. HAWKINS: When you were called anything short was it ‘Mac’?—I think so, from my recollection of it.” However, that is a minor point. He then gives an account of a visit to the defendant: “I went down earlier than otherwise I should have done, as I was afraid I should make some mistake, and I did not want to be embarrassed by going to dinner, and I thought it better to be there, and if I thought it was Roger Tichborne I did not think I should object to it being a few days earlier. When I arrived at the house, I was shown into a room on the first floor at the back of the house. There were folding doors separating it from the next room, which looked to the front of the house. I remained there for some time. Q. Do you remember while you were in the room waiting, hearing any voice or voices in the rear room?—I heard rather loud discussions for some short time, and one of the voices I thought reminded me once or twice of Roger Tichborne’s voice and

accent in a most striking manner. *Q.* What was the voice you heard in that room?—I heard loudish talking, one of the voices I recognized in tone resembling Roger Tichborne's. The accent and everything about it brought back in the most forcible manner to my recollection Roger Tichborne's voice and accent. It was a very French voice and accent. I could hear nothing of what was said by the voice that was talking very loud. *Q.* Did you hear the other voice?—I did. I heard another voice. *Q.* Was that a voice that you knew?—No. *Q.* How long did this continue?—I suppose two or three minutes. I was waiting some time in the room before I heard this conversation going on; and after this conversation, the door was opened, and the Claimant was shown in by a servant. *Q.* Did you have a conversation with him?—I had a long conversation with him. As soon as he came into the room, he walked slowly over towards me, and directly I saw him I was perfectly certain in my own mind that it was not Roger Tichborne, but I went over towards him and held out my hand, and said to him, 'It is a long time since we met.' I did not do it in a way showing very great anxiety to meet him, but I did not know—I was taken rather aback. When I saw him, he shook hands with me, and said, 'Yes, it is a long time,' and then he said, 'Won't you take a seat,' and we sat down. Then ensued a very long or pretty long conversation about various matters. *Q.* Do you recollect the substance of it?—He wanted to tell me the history of his travels, I think, in South America, and I had formed such a strong impression with regard to him directly I saw him, that I thought it better to go into the matter that I went down there for, which was to test him should I feel any difficulty in recognizing him, and I then put a great many questions to him with regard to my knowledge of Roger Tichborne, and things I conceived that Roger Tichborne would have recollected. **THE LORD CHIEF JUSTICE:** We shall prefer to have them in detail. **MR. HAWKINS:** Can you recollect what those questions were?—There were a great number of things. One of the first things I asked him was, when he left the regiment; and he replied to that by saying that he 'got his discharge,' or 'was discharged,' at Canterbury. I was thinking whether it was not time to cut short any further conversation, but Mr. Holmes, having asked me to examine him very carefully, and so on, I put to him a great many other questions. **THE LORD CHIEF JUSTICE:** We want to know, if possible, what they were: did he say it was at Canterbury that he left?—I thought that he could not be Mr. Tichborne, when I heard him talking about having been 'discharged.' *Q.* That is not a word that an officer would have used as to his retirement?—No officer would have used that expression. **MR. HAWKINS:** Do you remember what else you tested him with?—I tested him on a story in reference to a visit he was supposed to have paid to Howth, and asked him if

he knew Howth.”—Gentlemen, you remember that on the defendant’s cross-examination he spoke about going to Howth ; it forms a prominent feature in his cross-examination.—“ He was some time before he answered, and at last he said, ‘ It is in Ireland,’ and I said, ‘ Yes, it is in Ireland ; do you know anybody there ? ’ and he did not answer that at all. Apparently he could not answer me. I had two conversations with him, one in the house, and the other going down to the station. I think the one with regard to Howth was in the conversation we had as he was going down to the station with me. Q. Let us try and take each conversation as it occurred. Did you ask any other question when he told you he got discharged at Canterbury?—Well, he made a confusion about the family of Bellew.”—Gentlemen, you remember the passage in the letter to Mr. Hopkins about the Miss Bellew in Ireland.—“ Q. What did you say to him ? —He himself said something or other about one of the Bellew family to me, asking if I knew them, or something of that sort, and he then, referring, as I thought, to Lord Bellew’s family, confused their place with that of a Mr. Bellew, who was formerly in the House of Commons—Mount Bellew, in the county of Galway, a different part of Ireland. I also asked him questions to test him about the barracks. I also asked him if he recollected where we used to go with the men on Sundays to chapel from Portobello Barracks, and he told me he thought it was to St. Stephen’s Green, where I do not think there was a church at that time ; I am not sure ; but it was not to that we went.” Being asked if he remembered any other conversation that took place before he left the house, the witness says, “ I wanted to test him in French, and he seemed to have no knowledge of French at all, and I think he told me something or other about having had an accident from a kick of a horse. This afterwards led me to say I supposed the kick of the horse kicked the French down his throat. I wanted to make him pronounce French in order to test him, and I thought it not probable he would have forgotten a song if he might possibly have forgotten a language,—and after some time he broke out with the ‘ Marseillaise.’ I think he used one or two French words about it—gave a loud screech. Dr. KENEALY: A loud what?—A loud scream in the attempt to sing the ‘ Marseillaise.’ And the great shout which he gave when he pronounced the word ‘ Marchons ’ might have been pronounced by Roger Tichborne. That is the only resemblance there was to the voice of Roger Tichborne.” He adds, “ I never heard Roger sing that song.”

Before the witness left, Lady Tichborne made her appearance, and on hearing her speak, he found it was her voice he had heard in loud conversation or discussion with the defendant, on the other side of the folding doors ; and the probability is that Lady Tichborne was annoyed



at Mr. McEvoy having been admitted, and, if she had had her way, would not have allowed the interview to take place. He is asked about the defendant's hair, and he says, "Among other things that satisfied me, when I came to look at him, was that I saw that his hair was quite a different colour from Roger Tichborne's, and that he was altogether a much better looking man. The LORD CHIEF JUSTICE: You say his hair was quite a different colour; will you just explain what you mean by that?—His hair was a great deal lighter than it appears to be at present." Then he is asked, "Is your recollection distinct upon that point?—Very distinct on that particular point; it is a great deal darker than it was when I saw that person first; his hair was much lighter than it now is." Then he is asked whether he had ever seen in Roger any movement of his eyebrows. "I could see nothing at all that likened him to Roger Tichborne, except that they both had marked eyebrows. The LORD CHIEF JUSTICE: Marked eyebrows?—In both their eyebrows were marks. Q. But Dr. Kenealy asked you whether there was any movement?—My recollection of Roger Tichborne was, that when he laughed he used to shut his eyes very quickly and open them; his eyes were rather deep in his head. Dr. KENEALY: Did you ever notice any movement of his eyebrows?—No; that was the only movement I observed with regard to the eyes; I did observe that. Q. And his eyebrows remained still?—I think so. Q. But the eyes blinked?—When he laughed he used to shut his eyes, and quickly open them. Q. But no motion whatever of the eyebrows?—I do not think so." He says his hands and feet were small and bony. An endeavour was made, on cross-examination, to elicit from him that he intimated to the defendant that he recognized him; but he asserted, most positively, that he expressed no opinion further than what his manner might appear to imply. Such is Mr. McEvoy's evidence.

Gentlemen, there is another witness who is connected with Roger Tichborne's life in Ireland, and that is Mr. Stores Smith. He is manager of the Sheepbridge Iron and Coal Company, and appears to occupy a respectable position, being a magistrate of the borough of Chesterfield. He was nephew by marriage of Captain Manders, of the Carabineers, and he paid a visit to his uncle at Cahir for a month while the regiment was at Cahir in 1850, and was introduced, as he tells us, to Mr. Tichborne by reason of Mr. Tichborne's habit of smoking. Mr. Stores Smith himself was a smoker. He proposed to smoke in his uncle's room, and his uncle told him he could not allow him to smoke there, but would introduce him to a gentleman who would let him smoke to any extent. He took him to Roger's room and introduced him. A considerable intimacy seems to have sprung up between these two young men, and Mr. Smith tells us that he was constantly in and out of Roger's room, and on an average

spent four hours a day with him. He says he had a good deal of conversation with him about places in the vicinity of Stonyhurst, and which were objects of attraction, such as Pendle Hill and Whalley Abbey, and places in that neighbourhood; and they talked a good deal about the establishment of Stonyhurst, and about the church there and the yew tree hedges, and the studies, and the class of philosophers. He says that at that time Roger spoke so much like a Frenchman, that if he had not known who he was, he should have taken him for one: his language was as if he were translating French. He says he had a French song-book; and then he tells us of that singular habit which Roger had of catching a fly and smoking over it, and watching the effect of the smoke in producing a comatose state in the fly. The witness heard of the arrival of the defendant, and wrote to him proposing a meeting, but he got an answer to say that the evidence was so overwhelming that no more was required, and so it dropped. But in 1870, he saw a letter in the 'Times,' signed "Baxter, Rose, and Norton," and having, from former information, known that Mr. Holmes was the attorney, and not knowing that Mr. Holmes had been displaced and Messrs. Baxter, Rose, and Norton substituted as attorneys, he took them to be the solicitors for the opposite party, and he wrote to them, proposing to communicate with them, in answer to which they wrote on the 10th of November, 1870: "Dear Sir, We are greatly indebted to you for your letter of November 9th, and hasten to ask you to be kind enough to come to town on Monday or Tuesday next week, when you will have an opportunity of seeing Sir Roger Tichborne, and ascertain whether you can recognize him. We are glad to hear that you can dispense with railway fare, but shall, of course, be happy to reimburse you any other expenses to which you may be put. The details given in your letter are very minute, and we have no doubt your interview will be of great moment." He writes to them again saying he will call; and they reply on the 12th of November: "Dear Sir, We have received your letter stating that you will be up on Monday between four and five, when we shall be glad to see you. On second perusal of your letter, we observe that you appear to have written to us under a mistake that we were concerned for the present possessors; whereas we are concerned for Sir Roger Tichborne, the Plaintiff. We presume your object is really to ascertain whether the Plaintiff is the gentleman you formerly knew or not. I trust this will make no alteration with regard to the intentions of your proposed visit." After this an appointment was made for the witness to see the Claimant, and on the 15th of November he called at Messrs. Baxter, Rose, and Norton's office, at ten in the morning. He was taken into Mr. Spofforth's room and found Mr. Baigent there, and he had a conversation with Mr. Spofforth,

which lasted, he says, upwards of an hour. According to this gentleman, Mr. Spofforth certainly seems to have endeavoured to pick his brains, and to get from him all sorts of information which might be available afterwards. Mr. Stores Smith says, "He asked me all manner of questions regarding my knowledge of Roger Tichborne—how intimate my acquaintance had been, and a great many questions regarding Roger Tichborne's ways and habits; I told him distinctly about the French songs Roger had taught me, and he very particularly pressed me to give him the titles and names of the songs, which, however, I declined to do. I told him a great many things which I unquestionably would not have told him, had I not had the full impression that the door would open, and my old friend Roger Tichborne would walk in. When the time went on, and he did not come, I began to think I had better guard myself in what I said. Mr. Spofforth very particularly and markedly pressed for the French songs, and when I said I had copies, held his hand out and said, 'Have you got them with you?' I was very glad I had not, for I might have given them up. I told him I should not go into the details, because, in the event of my recognizing my friend, my evidence would not be good in his favour if he had been able to get the information of the matter I was going to test him on by any third person. Q. You declined to give him the names?—Yes, the names or their nature: I simply told him they were French songs, and had lain about my wife's music portfolio ever since. Q. Did you remark what the gentleman in the corner was doing?—The gentleman in the corner kept his hand to his face, and never spoke the whole time." "This interview," he says, "certainly lasted over an hour. I entered their doors exactly at ten o'clock, and it was striking twelve o'clock when I stepped out into Victoria Street. Q. You got tired at last? Did you make any inquiry about the defendant?—No, the interview rather ran itself out, as I may say. When I had given Mr. Spofforth a list of all the subjects on which I intended to ask Sir Roger when I met him, and which I was sure Sir Roger would remember, and Mr. Spofforth told me clearly the process by which I was to identify Sir Roger, there was a sort of pause. Q. You have not told us the process?—I was to be introduced into a room where there were four or five people; I was to look round and see if I could point out my old friend. To that I remarked that if the paragraphs in the papers regarding the size and weight of Roger were correct anybody could pick him out immediately. He said that was not so, that he had specially retained and hired some four or five of the stoutest men in the City of London—men all over twenty stone weight. I told Mr. Spofforth, in answer to that, that if his accent was so altered as he described, if he had got to twenty-five stone weight, had broken his nose—as



he told me he had—so that the shape was different, if he had lost his teeth, and had forgotten his French, he must be so very much altered that I should think mere physical identification would not be of much value, unless I had a conversation with him, on which I should place more reliance than any physical recognition or non-recognition.

*Q.* Were any arrangements made for an interview?—He said then, in a slightly embarrassed manner, ‘I am exceedingly sorry, Mr. Smith, but when I made this appointment I thought Sir Roger was at liberty; I have found he has made another appointment; I shall be much obliged if you can make another, and call on me at the ‘Waterloo Hotel,’ in Jermyn Street, at three o’clock.’” The witness thereupon leaves, but goes to the ‘Waterloo Hotel’ at the time appointed. He says, “when I got there, I was shown into a drawing-room on the ground floor to the right of the entrance passage. There I remained twenty minutes without anybody coming to me. Then Mr. Spofforth came into the room, very profuse of apologies, and said that the reason of the delay had been that he had been unable to find his four or five men over twenty stone; they were all unfortunately engaged, or hands could not be laid on them, but he had succeeded in finding one very big man, and he would now take me into the room where I should find two very big men; I was to look at them, and say which was my old friend. Upon that he led me across the lobby, past the entrance hall, into a room that corresponded to the one I had been in, on the left of the entrance passage of the Waterloo Hotel. There I saw the person who had been in the office in the morning, whom I have since found out was Mr. Baigent. Sitting in a chair was a tall man, six feet high, very thin, with black hair getting slightly grizzled, and whiskers, about some fifty-five years of age. Opposite was the Claimant, whose back was turned to me, who was smoking a big cigar. Mr. Spofforth said, ‘Now, sir.’ I said, ‘That is not him.’ He said, ‘Why not?’ I said, ‘Because the thing is ridiculous; he is several inches taller, and old enough to be his father; that is not him at all.’ Thereupon the gentleman rose up, and walked straight out of the room. The LORD CHIEF JUSTICE: That was the tall gentleman?—Yes. Mr. Spofforth then pointed to the gentleman who had his side turned to me, smoking a cigar, and said, ‘What do you say to this one?’ The person turned round and looked at me. Mr. Spofforth said, ‘What do you say to this one?’ I said, ‘Well, I will not say Roger Tichborne might not have become this person,’ laying very great stress on that. Mr. Spofforth said, ‘May I trouble you to retire into the room that I took you from?’ upon which I retired into the room from which I had been led. In a few minutes Mr. Spofforth rejoined me, and he came in and said, ‘You do not recognize your old friend?’ I said, ‘Not in the least.’ He said, ‘Is there nothing

that struck you?' I said, 'Nothing: I never saw anybody who was so dissimilar in my life.' Mr. Spofforth said, 'That is very odd; he does not recognize you.' I said, 'Well, Mr. Spofforth, it is odd, because I have altered less than anybody could alter in the same number of years.' 'He does not know you,' he said. 'Are you sure there is nothing that reminds you of him?' I said, 'Nothing; but as I told you this morning, that would not make me recognize him, unless I had the opportunity of hearing his voice and talking to him.' He said he would go back and see him, and see if he would see me again. He left me, and came back in two or three minutes, and said, 'I am happy to tell you that Sir Roger will see you; will you come with me?' I then went. Mr. Spofforth handed me a chair at the opposite side of the table to where the Claimant was seated, and took a seat on a low buffet by the side of the chimney-piece. Mr. Baigent sat behind me near the window. Q. Just give us the conversation that occurred?—For about a minute I was silent, and could only see the side of the defendant; and then I said, 'So you do not recollect seeing me?' He turned round slowly, and said, 'No.' I then said, 'Are you sure you do not?' Then he said, 'Where was it that you met me?' I said 'At Cahir.' 'When?' he asked. I said 'From the middle of May to about the 15th of June, 1850.' He said, 'Was it not at Clonmel?' I said, 'No, it was not at Clonmel.' He said, 'Were you never at Clonmel?' I said, 'Yes, I was; I had a day's trip there.' He said, 'Did you not see me at Clonmel?' I said, 'Certainly not, you were never there during the whole month I was with you.' Then he got up slowly, and threw open a door which led to a bedroom, and closed it behind him, and came out again in two minutes, sat down in his chair, and said, 'I see you were right; I was at Cahir at that time.'" Now, that is a remarkable circumstance, if true, as showing that the defendant had some source of information to which he could refer, in order to determine where he was at any particular period. "He said, 'I see you were right; I was at Cahir at that time.' I then asked him if he did not recollect a nephew of Captain Manders coming to stay a month there, and smoking in his room, and teaching him songs and conversing with him from day to day. I may say that throughout the whole of the interview I was much more frequently answered by another question than by having an answer to my own. I think it was at that point that the Claimant said to me, 'If you were in my rooms in the way you say you were, who were my servants?' I said, 'I do not know who they were.' 'You do not know?' he says. I said, 'I remember Manders's servants; I never bothered my head about Roger Tichborne's.' 'No,' he said, 'you cannot tell me who my servants were.' I said, 'No, I cannot.' He said, 'If you had seen me in my rooms

in the way you say, you would have known my servants.' I said, 'I never bothered my head about that.' He said, 'No, because you were never in my rooms in your life.' I said, 'I do not think I was, but I unquestionably was in Roger Tichborne's,' to which the Claimant replied, 'It is like your impertinence to sit there and say that to me'—drawing himself up. I rose to go. I said to Mr. Spofforth, 'It appears I am the impostor.' Mr. Spofforth said, 'Sit down: I did not introduce you, two old friends and gentlemen, to quarrel. If you will sit down and be cool, and suggest other topics and other things, no doubt a chord will be struck, and Sir Roger will revive, and we shall get on very nicely.' Upon that I endeavoured to strike chords. I mentioned the fly matter. I told the Claimant that if he remembered nothing at all about it, I should not be at all surprised, still, it was one of those tricks and habits that he did scores of times that he might remember. I led up to it: I said he smoked at them—I did everything but tell him. I said, 'Do you recollect anything about it?' After a pause, he said he did. He said, 'Did I use to stick pins in them?' 'No,' I said, 'you did not.' Then that subject was dropped. I then tried him on a person who was very well known to all the Carabineer officers in Cahir and all the garrison for a year or two previous and after—a lady—or a woman, at any rate. I led up to it in such a manner that I conceive the real Roger Tichborne must have known, and certainly every other Carabineer officer must have known. Mr. Spofforth tried very hard indeed to assist the Claimant, or rather to get me to state it more precisely. He asked me if she was a woman of the town; I said, 'Certainly not.' 'Was she a lady?' I said, 'No.' He said, 'Was she something of the pretty milliner kind?' I said, 'No, I cannot describe her. I simply say if Roger Tichborne does not recognize her now, he is the only officer in the Carabineers, in Cahir at that time, who would not know to whom I am referring?' Then that passed. I am not at all sure I am giving these things in the exact order. I am positive everything I mention were tests I put; it was difficult to put things. That test, which was a strong one, having broken down, I asked him if he remembered riding with me on a given Sunday.\* I could get no answer except an inquiry as to what horse he rode, which I should have given him if I had remembered, but I did not take much interest in horses. Q. I may suggest to you, did you mention about your uncle's marriage?—I alluded to that. First we had two explosions. We came to a deadlock twice. I got up to go, and was requested to sit down. After a good many questions—I remember now what was my next important one—I asked him if he remembered the park at Cahir. He said he did not. I pressed him again and again. Q. Did he not remember the park?—He said he did not. Then Mr. Spofforth said, 'You mentioned the park this morning, Mr. Smith?' 'Yes, I did,' I said. I never



dreamed but that he would have remembered the park. I said I should ask him two or three questions. He said, 'You mentioned the name; what was it?' I said to Mr. Spofforth, 'Sir Roger ought to tell you,' but he did not. He said, 'You called it Glan something.' I held my tongue. He said, 'I think you called it Glanbell?' I said, 'I did not; as Sir Roger cannot tell you, I will; I called it Glengall.' Then the Claimant woke up, and said, 'Oh! Glengall Park, the seat of the Earl of Roscommon'—Now that is remarkable, because there is no Earl of Roscommon. The witness continues—"I said, 'The seat of fiddlesticks,' to which he said, 'I must have been thinking of something else.' I said, 'I should think you were.' Then we paused. Then I asked him if he remembered Phillips, the riding-master. He said, 'Perfectly well.' I asked him if he remembered his rooms. 'Yes,' he said. 'Where were they?' In reply to that he said, 'Close beside.' That was the fact, they were. I asked particularly if he remembered being with me and Captain Phillips, and others, in what turned out something like a Bacchanalian party in the end. It was a farewell party to me. I believe it was the first time Roger Tichborne ever sung in company. I believe I was the first person who discovered that he could sing, and I introduced him to Captain Manders as a singer. The defendant did not remember anything about this dinner, and every now and then informed me I had never been at Cahir, and never knew Roger Tichborne, and never was in Captain Manders's room. I then asked him where Manders's rooms were, and he said, 'Close behind.' I said, 'That is rather vague; have you got a piece of paper, and will you put down on paper the situation of your rooms and Captain Manders's and Phillips's, with relation to the gateway?' He then said, 'Look here, I have done that I do not know how many times for people, and I am not going to go to do it for you, because, as sure as I sit in this chair, I never saw you in my life before.' I said, 'I quite believe it,' and got up. Mr. Spofforth calmed me down, and asked me still to find some chords. Then I came to the test about my uncle. I said very deliberately indeed, 'Do you remember Manders getting married?' He said quickly, as quickly as possible, 'No, but I remember his wife dying.' I said, 'You could not have done such a thing, because it was before you joined the regiment.' He said, 'It must have been very soon before or at the time.' I said, 'I do not see how you can recollect.' She died in 1849; the funeral was in June, 1849, and the real Roger Tichborne joined in October, 1849. After that I said to him, 'Are you sure you do not recollect Manders getting married?' to which he replied, 'I remember MacEleney's daughter getting married.' I said, 'What has that to do with it?' He was the band-master. I said, 'Do you mean to tell me you do not

remember Manders marrying a young wife half his age, a second wife, a lady of some fortune, and bringing her to Cahir barracks, and to the next room to yours, and you being introduced to her on the day of her arrival?' He thought some time, and he said, 'Of course, I do; he married Phillips's wife's sister.' I added, 'You know nothing.' Phillips had no wife while Roger Tichborne was in the Carabineers, and Manders and he were never on particularly good terms. I snapped my fingers and got up again. Mr. Spofforth wished me to stop a little. I said, 'I am wasting time; it is a perfect waste of time. I am perfectly certain this man is not Roger Tichborne, and I never saw him before: he is equally certain he never saw me; what is the good of going on.' He said, 'Try again: You have no idea how his memory has gone.' I put my hand on the door, I turned round and walked straight to him and began over again, and said, 'Roger Tichborne had a music book he was very fond of. I am, perhaps, telling you'—I remember I used those words—'what I ought not to tell you; it was bound in dark blue or purple; it had either steel or copper plates engraved in it, and it contained 200 or 300 songs; whether they were by Beranger or not I do not know; do you remember that book?' He said, 'I think I have some recollection of it.' I said, 'Do you remember the name of any song in that book?' He said, 'No.' I said, 'If you have forgotten the names of all in the book, can you hum the tune of any tune that Roger Tichborne knew?' 'No.' I said, 'Is there any French song in the whole world in that book or out of it, of which you know the name, or can sing, hum, whistle, or play one note?' to which he answered, 'No.' I then bowed to him and left the room." Then he says, "On the following day I received a note from Mr. Spofforth, I think it was the day but one after. It was written by Mr. Spofforth the day after the interview, and received by me the day but one after it. I see there is a postscript in Mr. Spofforth's own handwriting, I suppose it is. The note is in the handwriting of a clerk, and the postscript is in the handwriting of the person who signed the letter." Then the letter is read: "I should like to have your private opinion on yesterday's interview. It appeared to me that as soon as you came into the room, by your manner and first question, you created a strong feeling of antagonism against yourself, and that the whole result of the interview arose from that. Considering that you stated of the two stout persons, Sir Roger Tichborne was most like your former acquaintance, and that you afterwards said you would not swear Mr. Tichborne could not have grown into that man, I cannot help thinking that had a little more forbearance been shown on both sides, the result might have been different. However, I should like to know what you really think. Please let me know what we are indebted to you; I

do not desire you to be put to personal expense. I followed you to the door to state this, but found you had left before I could catch you." Then this is in Mr. Spofforth's handwriting. "P.S.—As a matter of curiosity, I am tempted to ask you what is the nature of the incident as to the house flies. After you had left, he, R., explained it to me, and I can hardly credit anyone could have such an astounding taste." The witness writes an answer to that, but does not explain about the flies, and then the correspondence ceased for some time. "I forget," he says, "whether there were one or two letters at the time. I replied to him and he to me, and I replied again." The correspondence was afterwards resumed in March, 1872. Mr. Smith writes on March the 7th, "I have very great satisfaction in referring you to our correspondence of fifteen months ago. Should you any longer feel any interest in your interesting client, I shall be very glad to tell you all about the 'flies,' or anything else." Mr. Spofforth writes on the 8th of March, "I shall be glad to hear your account, now that no mischief can accrue."—The trial was then over.—"Write by return of post, and I will to-morrow write to you stating what the plaintiff told me he did with flies, and to which he supposed you alluded. Our letters will cross, and we can then compare accounts." Mr. Smith replied on March the 9th: "The real Roger, when I used to sit smoking with him, was very fond of catching house flies in the usual manner, and placing one or more of them under a tumbler glass; and then, drawing the tumbler to the edge of the table, he went upon his knees, and puffed great volumes of smoke into it until it was as opaque almost as if filled with milk, and the fly was rendered insensible. He then tried all manner of experiments, now jerking up the tumbler an inch or so on one side, and at each jerk some of the smoke was expelled and air took its place. This would be repeated until the atmosphere in the glass was sufficiently diluted to revive the fly, which would commence kicking, and then Roger would either blow more in and stupify it again, or jerk it clear and let the fly go. Or he would suddenly lift away the glass, leaving the smoke hanging over the fly like a cloud, until it dissipated, when the fly made (what the Claimant should have done), a precipitate bolt of it. This was done daily, and often several times a day. In fact he nearly always smoked with a tumbler within his reach, and if ever a fly came handy for catching, out went his hand and the creature was caught in an instant. He seemed to take a deep interest in this experiment, and was very anxious to show me the different behaviour of a spider under similar treatment, and finally succeeded in catching one and showed me. A fly, the minute he feels a little revival, kicks with his legs, the minute he can walk he walks, and as soon as he can fly he flies. But a spider curls himself into a pea, and shows no



signs of life for from five minutes to a quarter of an hour after the air is quite pure, and he is quite himself again, and his first movement is his last, he is off like an express train. This was what I alluded to, and you must remember I led up to it very closely. I said ‘Roger Tichborne had a habit of catching flies and amusing himself with them; do you remember anything about this?’ Castro, after a few moments’ pause, replied, ‘Did I stick pins in ’em?’ What he afterwards told you I shall hear to-morrow.” Well, it seems that Mr. Spofforth, after inviting this statement, and promising to reciprocate by telling what the defendant said to him, thought better of it, and telegraphed to say, “I think it better not to send my letter: You may do as you like.” “Well,” says Mr. Smith, “I had already posted mine and I got the telegram too late, and so I wrote to him on March the 10th, ‘Dear Sir,—Relying on your word, I wrote, at twelve yesterday, a full account of what I alluded to about the flies. At a little after one I left the office; at two the offices were closed, and the letter-bag sent to the post office. At 4 p.m. your telegram reached the works, and between five and six reached me at my house. To give you an opportunity of returning the letter unopened, I shall mark the envelope that contains this, back and front, ‘From J. Stores Smith, to be opened before any other letter’ in such a way as must attract attention. Yours truly, J. Stores Smith”’—and he sends that. Finding the thing had gone too far to go back, Mr. Spofforth, like a gentleman, thought it right to send the letter containing the defendant’s statement. It is dated the 9th of March: “The plaintiff stated to me before I left the room, after your departure, that he supposed you alluded to a habit he used to have of eating flies. I desired afterwards to ask you if this was the true account, and for that purpose spoke to your friend, Mr. Fowler, but somehow the communication was never made. I should be glad to receive your account of it.” Then Mr. Spofforth writes again on the 11th: “Your two letters were delivered with a lot of others this morning, and unluckily the one not marked on the outside was opened and read first. I then came to the other which caused me much concern that I should have opened the first. The only reparation I can make is to send you the letter which I wrote on Saturday and determined not to post, by which you will see that the account he gave me is altogether wrong.” Then the witness is asked finally whether Roger did eat flies, and he says, “No, never to my knowledge.” Now that is a singular mistake to have made, and you must judge of the evidence of that witness of the conversation he had with the defendant, whether the defendant was wanting with reference to the various questions which Mr. Stores Smith put, in the knowledge which it would have been reasonable to expect Roger to possess.

The defendant had been cross-examined with reference to this

interview with Mr. Smith. Of course it is right, having heard Mr. Stores Smith's account of it, that we should hear what the defendant said, and he denies Mr. Smith's account in substance. I do not think the matter of the flies was put to him; the correspondence had not then taken place, indeed it was not known until the trial was over. He admits that he saw Mr. Stores Smith at the Waterloo Hotel. He admits that Mr. Spofforth and Mr. Baigent were present, so that he might have been confirmed in his contradiction of Mr. Stores Smith, if he had thought proper to call either of those two gentlemen. He says he believes Mr. Smith had written to Messrs. Baxter, Rose, and Norton. He says, "I am under the impression I was in the room when he came in. I cannot remember, but cannot dispute it, that I and some other gentlemen were sitting together, and when Mr. Stores Smith came in he pointed to the other man and said, 'That cannot be Sir Roger; he is far too old and too tall, and has nothing in common with him,' whereupon the other gentleman got up and walked out of the room." Then the Solicitor-General asks, "Did Mr. Spofforth tell you (Mr. Stores Smith and yourself) to go into another room?" He answers: "What a confounded falsehood! Why, Mr. Spofforth never left us the whole time, nor Mr. Baigent either. I should not at all wonder if Mr. Spofforth did say to Mr. Smith, 'Well it does not seem that Sir Roger recognizes you either, for I certainly did not recognize him. I don't know, I am sure, whether Smith said, 'Well, I am not surprised at that,' or that Mr. Spofforth said, 'Now do you see anything in him to remind you of Sir Roger,' and that Mr. Smith answered, 'No, he is more utterly unlike in every respect than I could have conceived possible; but if he be Sir Roger he can convince me that he is so in five minutes.' I know he told a lot of falsehoods. I was against seeing him altogether on account of his statement to Mr. Spofforth previously. It is very true he said, 'Do you remember me,' and I said, 'No.' I think he said, 'Do you not remember me staying with Manders, and you used to lend me your horse to ride.' I was quite satisfied when he said that he was saying what was not true. He might have said, 'Do you remember my coming and staying with Manders, and being constantly in your rooms,' but if he did, it was false. I did not say, 'No,' nor did he say to me, 'Where do you say I was when you knew me,' for I do not remember him. I believe there was some conversation about Cahir and Clonmel. It never happened that I went into a bedroom or other room, as if I had been to look at some memorandum to see whether he was right. I am not aware that he mentioned a female of any description, but I must acknowledge that my memory seems to have failed me about the time. The conversation did not last long; and I am certain I never left the room, and

never left Mr. Spofforth's presence. Nothing was said about a park. Glengall Park is in Tipperary, a few miles from Cahir. I believe Lord Roscommon lives there—I think it is the place where General Napier went to when he came. I won't say I did not state to him that I used to amuse myself by sticking pins into flies. I don't think he asked me to draw roughly on a piece of paper the outline of Cahir barracks, showing where my rooms were, Mr. Manders's, and Mr. Phillips's. I think I did say, 'I have done that again and again until I am sick of it, and I am not going to do that for you, for as sure as I sit here I do not think you know me, and I have not seen you before to-day,' because I was under the belief then that he was no more or less than a spy sent to get into my presence; and to tell the truth I believe so now, because Mr. Cullington was just outside, and if I had known it at the time he never would have come into my presence, but I did not know it till afterwards. I never said, 'Manders would say anything; it was him that sent you to be a spy upon me,' because I have the highest opinion of Mr. Manders. I do not believe that Mr. Spofforth said to Mr. Smith, Do not leave the room; that he had not brought him there to quarrel; or beg Mr. Smith to sit down and have a little more talk. There was no conversation about Manders's wife, and I did not say, 'Oh, I recollect his marrying a second wife, he married Phillips's wife's sister.' What a falsehood that is: you are talking about Frazer. Mr. Smith did not say, 'It is quite a waste of time; I am certain I never saw this person before; he cannot remember anything that occurred; but I will ask him two more questions.' I do not believe that a single word passed about Mr. Smith asking me whether Roger Tichborne had a book of French songs with engravings to it, or my stating in answer that I recollected something of having such a book. Neither did he say, 'He could sing the airs of scores of them, and knew the words of many of them, and ask me whether I could sing one single one,' and that I said, 'No.' He certainly did not say, 'Can you whistle, or hum, or sing a song, a French air, a single bar, or even a note of them, a verse, or a single line; or a name or a title of any small French song,' neither did I say 'No.' Thus, as regards all the substantial allegations of Mr. Stores Smith in his evidence, the defendant negatives them, one and all. You must judge between them. If the evidence of Mr. Stores Smith is true, the knowledge of the defendant as to all that passed between Roger and the witness is singularly at fault.

Captain Villars Morton, a witness whose evidence on the subject of identity I have already referred to, speaks also to a remarkable conversation which took place between Captain Polhill Turner, Major Kellett, and the defendant in his presence, on one of the occasions when the defendant was coming out of court on the former



trial in May, 1871. He is asked, "Did either you or Captain Polhill Turner speak to the defendant?—No, Captain Polhill Turner spoke to him after the defendant spoke to Major Kellett. Q. The defendant spoke to Major Kellett?—First. Mr. JUSTICE LUSH: Was he with you?—Yes. Mr. HAWKINS: Do you recollect what Major Kellett said to him?—The defendant said to Major Kellett, 'I know you,' and smiled. Q. What did he say?—Major Kellett said, 'I suppose you do,' or something of that kind, and then said, 'Who am I?' and the defendant said, 'Colonel Betty,' or rather 'Betty:' he did not say 'Colonel.' Q. Betty was an old officer in the Carabineers?—Not an old officer. Q. He was an officer in the Carabineers in Roger's time?—I think he had joined before Roger left: shortly before he left. Q. At all events Major Kellett was well known to Roger?—Yes, he should have been. Q. Now, Captain Polhill Turner, I dare say you know, was an officer a long time in the regiment with Roger Tichborne?—Yes. Q. When Major Kellett said, 'Who am I?' did he look at you or Captain Polhill Turner and recognize either of you?—Captain Polhill Turner then said, 'Who am I?'—The defendant looked at him for some time, and said, 'I do not know.'" That certainly is very remarkable; as, if Captain Villars Morton is speaking accurately, it would amount to an exhibition of ignorance of persons with whom one would suppose Roger Tichborne must have been familiar. He takes Major Kellett for Colonel Betty, and when Captain Polhill Turner asks him who he is, he does not know—Captain Polhill Turner being the officer who commanded the troop in which Roger Tichborne was for some time lieutenant in Ireland.

There is another witness who speaks to a conversation with the defendant, namely, Brand, the gamekeeper, who went to see him in consequence of a letter he had received from him. This was in February, 1867. "To W. O. Brand. It a long time Brand since you see me. therefore I suppose you have almost forgot me but I should very much like to see you again. therefore if you could find time to come to Croydon I will pay your expenses. R. C. D. Tichborne, Bart." He goes down with Moore on the 22nd March. Bogle opens the door, and says Sir Roger is in; but Brand says that Lady Tichborne was at the window when they came up to the house, and saw them coming in; and when Bogle, who had gone in to ask if Sir Roger would see them, came back, he said, "Sir Roger is not in." Brand says, "I have come a long way specially to see him, and I will not go back without seeing him." He went into the town and walked about, to allow time for Sir Roger to come in, and he met Bogle. He went back with him and was admitted. The defendant offered him something to drink, and they had a bottle of port, and they got into conversation about

guns and dogs, and the defendant asked him what had become of the dogs, Spring and Piccrust. "I told him that they went to Upton, and Mr. Gosford had had the charge of them. Mr. HAWKINS: Do you recollect anything being said then by him to you, or by you to him about his riding up the park?—He asked me if I recollected his riding his uncle's pony up the park. I said I recollected Roger Tichborne riding up the park on a pony, and he asked me if I recollected it running away. The LORD CHIEF JUSTICE: The pony running away?—Yes, my Lord. Q. What pony was he speaking of—did he say what pony?—He asked me if I recollected the name; I said I did not know. Q. Whose pony was he speaking of?—Of his uncle Sir Edward's. Mr. HAWKINS: What did you say about that?—I said, 'I recollect the pony running away with Mr. Roger Tichborne, but not you.' That was the answer I made. He said, 'But you will.' He asked me what her name was. I said, 'If she ran away with you, you ought to know better than me.' Q. Was there any more conversation?—He asked me the name. I said, 'Well, you ought to know better than I do.' There was a knock came at the door, the gentleman went out and came back and told me the name, and said it was 'Louisa.' He looked through the door, and came back and said her name was Louisa. That was right. Q. Do you recollect anything else that was said?—Not particularly. The guns were mentioned, the single-barrel gun. Q. Let us know what was said about the guns. Try and remember what passed?—He asked me what became of a single-barrel gun, No. 12 gauge." This gun, according to Brand, had been sold at a sale of some of Sir Alfred's effects, but had been bought back afterwards by the Dowager Lady Tichborne. The witness goes on—"I asked him who made the gun. He said, 'Cox, at Winchester.' I asked him who gave him the gun, and he said his uncle Edward. Now, Sir Edward never had a gun in his life. Q. It does not follow that he might not have given one to him. Do you know who did give it to him?—Lady Henry Tichborne. Q. That would be his aunt. That was the gun you spoke of before?—Yes. Q. The gun which you said the Dowager Lady Tichborne afterwards had?—Yes, she purchased it from Crooks, the gardener."

Now comes a more important matter than either of the foregoing. "Do you remember anything being said about your residence—your cottage?—Yes. Q. What was said about that?—He was talking about where I was living when Roger Tichborne was living at Tichborne Park. I asked him, if he was Roger Tichborne, where I was living when he was staying at Tichborne Park. He said, 'Down at Vernals, amongst the trees.' Q. Was that correct?—Decidedly not: I lived at a cottage in the village, near the church. Q. How

far off was that cottage?—I should say three-quarters of a mile round the road. The LORD CHIEF JUSTICE: Was there any cottage at Vernals? Mr. HAWKINS: I am coming to that; your Lordship will see there was. Q. Did Roger Tichborne see you frequently at your cottage by the church?—Day by day, dozens of times a day, and more too. Q. Was there a cottage called Vernals?—There was, but not when Roger Tichborne was there. Q. You know Vernals Cottage?—Perfectly well. I afterwards lived in it. Q. Vernals is just at the entrance to the park, is it not?—It is, from the Winchester Road. The LORD CHIEF JUSTICE: What is the meaning of ‘Vernal;’ is it a cottage occupied by a person of the name of Vernals?—A cottage that Sir James purchased after he had been at Tichborne for some time; Mr. Gosford bought it for Sir James. Q. Why was it called Vernals?—I really cannot tell you why; there was a barn called Vernals; a barn and stables and different things there. Q. When did you afterwards live there?—I went to Vernals in 1858 or 1859.” Therefore Roger never could have known of his living there: that is the purport of the examination. “Q. It was first bought by Sir James?—It was first bought by Sir James. It was after he had purchased it that I went to live there; it was an old, shabby place, and it was then made a respectable-looking place before I went there to live. A JUROR: Was it a cottage before Sir James bought it?—Yes, a shabby place, a lot of sheds, and it was made into a respectable-looking place, being near the entrance at the bottom of the drive. Mr. HAWKINS: You are sure you never went to live there until long after Roger Tichborne went away?—I will swear I did not. A JUROR: It never was in Sir Edward Doughty’s possession?—No, not to my knowledge. Mr. HAWKINS: Do you remember who did occupy it?—A man of the name of Mansfield. Q. That is before Sir James bought it?—Yes. Q. How long had you lived in your cottage near the church?—I lived there four or five years. Mr. JUSTICE LUSH: All the time that you knew Roger?—Yes, my Lord. The LORD CHIEF JUSTICE: You must have gone to some other cottage before you went to Vernals?—I lived in the gardener’s cottage when I first went to Tichborne; I lodged with the gardener; there was not a house to put me into, not convenient. Mr. HAWKINS: After that you went to the cottage near the church?—Yes, I did. Q. Then to Vernals?—No, not from there to Vernals. I had three cottages during my time. I had a cottage by the house where the bailiff lived, for a short time. This place was more adapted for the keeper, and, therefore, they had it put into thorough repair, and I went there to live; it was at the bottom of the park.” Then he is asked, “After this interview at the hotel, I think you saw the defendant again at the trial?—I did every day for six weeks. I was in London six weeks.



Q. Did you hear him cross-examined and examined?—I did; I heard him several times; I got into court as far as I could get in, it was so crowded. Q. You had a good opportunity of hearing him?—I had. Q. And seeing him?—I did, day by day, getting into his brougham; and I passed him, and stood opposite him while he was getting in. Q. Is the defendant Roger Tichborne?—Decidedly not.”

On cross-examination, he admits having noticed a twitching in Roger's eye—he says the left eye—“when he was casting bullets. Q. That was very soon after he went there in 1847, I suppose?—Yes, it was. Q. Did you know Mr. Robert Tichborne, the uncle?—I did. Q. Well?—Yes. Q. Had he any twitching?—I never noticed any; he used to wear glasses, and I could not tell whether he twitched his eyes or not. Q. Did he always wear glasses, or only occasionally?—Mostly; when I saw him. He lost them once at a place called Hookham, and I found them. Q. You never saw any twitching with him?—No. Q. Or Sir Edward?—No. Q. Or Miss Kate Doughty?—No. Q. The only one you noticed it with was Sir Roger?—Yes. Q. Was it confined to his left eye, or did he sometimes twitch his right a bit?—The nerve in the corner of his left eye. Q. That he used to do very often?—When he was a little excited. Q. He would not be excited when he was casting bullets?—Yes; I have seen him so; he was very excitable, was Roger Tichborne. Q. Very excitable?—Yes.” Then he is asked about the pony. “Can you tell me the colour of the pony that was got for Sir James?—A brown one. Q. Had you ever seen a pony before that at Tichborne?—Several. Q. What were their colours?—One was a grey. Q. Was that used by Sir Edward?—Never. Q. What use was that turned to?—Alfred Tichborne used to ride it. Q. Was there a white pony?—Yes. Q. What was that used for?—Mr. Alfred used to ride it when he was a boy.” He means the same pony. “It was not a particularly white one. Sometimes he looked whiter than he did at other times. Q. Was it the same pony that used to turn from grey to white, and from white to grey?—I said there were several ponies; a brown pony, and a grey pony. Q. Was there a white pony?—I do not know it was particularly white. Q. Was there a white pony?—You may call him grey or white. Q. Do you mean to say Sir Edward never used that white pony?—He never used a white pony?—What sort of pony did he use?—A bay one. Q. Never by any chance used the white one?—He did not.” That only becomes material when we come to the statement of the defendant on the subject of the pony.

Well, he afterwards goes to Mr. Holmes, and Mr. Holmes asks him to see the defendant again, and he does; and then the defendant says to Mr. Holmes, “I have told Brand if he will stick to me I will stick to him, and he shall never want as long as he lives.” To

which the witness says he answered, "I am very much obliged for your kind offer; I never did want, and I hope I never shall; but as to swearing you are Sir Roger, I will see you——" something else first. Such is Brand's account of his interviews with the defendant.

Gentlemen, on the cross-examination of this man, one of the imputations arose, so painfully frequent on this trial. Brand owed a small sum of money to a Mrs. Crook, and he wrote to this Mrs. Crook to say he should soon get money from Bowker. It gave rise to one of the first occasions on which we had to check the tendency of the learned counsel to make unfounded attacks on the character of witnesses. The letter was made the foundation of an attack on Mr. Bowker, as being prepared to purchase evidence for money. It runs thus:—"Mrs. Crook I daresay you will Think It strang th you Avent herd from me but It as not bin in my power To send To you as yet But will as son as I can I can ashure you That I ham as anckus to pay you as you ar to hav it That is dew to you But If you will wait you shal be paid al That I how you as son as I Can Mr. Boowker as promist To pay me wat his dew to me Shartley I ashure you That this his a awfel der Place I se thar as ben a del To do about the tichborne affair I whos quit sirten that It whos Sir Roger at the first I Receved a letter from Sir Roger Last wednesday you nedent Be at al surpised to se me at alresford after abit again Oping your famley his all whel my wife as not ben wel Long to gether Since whe av Ben In this part oping Jams His quit whel and Wife and your Self I Beg to Remain yours Respectebl ALFRED BRAND excus ast Mrs. Crook." You see, when he wrote that letter, as far as I can make out, he had not then seen the defendant, and he had not formed any judgment; but the letter was made the foundation of a very violent attack on Mr. Bowker. It turned out, on explanation, that the man upon Sir Alfred's death, when he left his place as gamekeeper at Tichborne, had money owing to him. Sir Alfred died insolvent. There were executions in his house, and his affairs had not been wound up when that letter was written. Mr. Bowker told the man he should soon be in a position to settle all outstanding matters, and his account should be paid, and from this promise of Mr. Bowker, although the man speaks of the money that he was to receive as "wat his dew to him," it is implied that Bowker was going to pay him money in order to bribe him to say this was not Sir Roger, when he knew he was.

The next witness who speaks to conversation with the defendant is Colonel Greenwood. Colonel Greenwood says that on one occasion he was going to town in the train when he saw the defendant and Colonel Lushington, and at the suggestion of Colonel Lushington he got into the same carriage. The defendant spoke first, and said, "You do not seem to recognize me." "No," says Colonel Green-

wood, "not in the slightest." He continues, "We sat silent, and I said, 'Is it by your wish that I am here?'—He replied, 'No, but I do not object.'" The train had stopped at some station to put on a carriage, and on the defendant saying this, Colonel Greenwood got out of the carriage and joined his party, Mrs. and Miss Higgins, whom he was escorting up to town. When the train arrived at Guildford, Colonel Lushington came to the carriage, and pressed him to return, and said the Claimant was very anxious that he should have the opportunity of cross-questioning him, whereupon he returned with Colonel Lushington to the carriage, and the three went on together to Woking, where they changed carriages. He tells us what passed. "I asked him if he could tell me anything that had happened between me and Roger Tichborne. He asked me several questions, which I did not remember anything about. After that Colonel Lushington said, 'If you two know one another as well as I suppose, you can tell Colonel Greenwood something that is only known to you two.' He put his hand on his head so (Colonel Greenwood described the attitude) for I should think nearly a minute, and said, 'Did not you hide your coat in a hedge at night when going on foot to Winchester on your way to London?' I said, 'The first part of it is true, but I was not on my way to London.'" However much of it may have been true, it was not a thing known only to the defendant and Colonel Greenwood, which was what Colonel Lushington had asked for.

Colonel Greenwood tells the story. A lady of the name of Legge, a neighbour, was taken suddenly and dangerously ill, and Colonel Greenwood having heard of this walks over after dinner to the lady's house, which was some little distance off, and finds the statement true. Her people wished to have her son sent for immediately, fearing she was dying. There was no telegraph in those days, and no means of immediately communicating with this gentleman, who was a clergyman at Ashted, somewhere in the neighbourhood of Kingston, and Colonel Greenwood, who was a very vigorous and active man, made up his mind that he would walk all the way to Kingston and call up this gentleman, and tell him to start at once to come and see his mother, and he put his overcoat under the hedge and started on foot for Ashted. The overcoat was afterwards found by one of the labourers who saw it under the hedge, and knew it was Colonel Greenwood's from the colour of it, and took it to Brookwood. The Colonel went to Ashted, and came back with Mr. Legge, the lady's son. The defendant was acquainted with this story, but did not exactly know the details of it. In the first place, Roger Tichborne was in Ireland at the time this occurred (for Colonel Greenwood says it happened in 1850), so it could only have been known to him at second hand; so also it may have become



known to the defendant at second hand. At all events, the notion of Colonel Greenwood having gone to London on the occasion was a mistake; he did not go to London. But I cannot help thinking that to say that because the defendant did not know all the particulars of the story, he must, therefore, necessarily be some one other than Roger Tichborne would be hardly fair, because if Roger Tichborne heard the story afterwards, it would be likely enough that whoever told him of it made some blunder, substituting London for Ashted; and independently of the person who told the story to Roger Tichborne having perhaps made a mistake, it would be very likely that Roger himself, although he heard the story correctly at first, might make a mistake of that kind. I do not think much importance attaches to that; while the fact that the defendant is acquainted with the substantial part of the story is an instance of knowledge which makes in his favour, unless we suppose it derived from extraneous information, and the circumstance appears to have been generally known.

There is another matter, however, about which the Colonel asked him, which Roger Tichborne should have known better, or recollected better, than the defendant seems to have done. Miss Doughty had a bay mare called Rowena, which Colonel Greenwood had bought for her, and trained to carry her. He taught Miss Doughty to ride; it was well known that Colonel Greenwood was one of the first horsemen of the age. He knew the mare perfectly well, and he tells us Roger Tichborne also knew her perfectly well, and knew her name; and he tells us what is remarkable, as Roger when at Tichborne in 1849 used to ride with his cousin, that the defendant not only could not remember the name, but also mistook the colour. He said she used to ride a grey mare. She never had a grey mare. Mr. Gosford had a grey mare which would carry a lady, and when they wanted a horse they sometimes borrowed the grey mare, but Miss Doughty never had a grey mare.

The third part of the conversation took place with reference to what occurred when Colonel Greenwood accompanied Roger to Sandhurst for his examination. They went to Sandhurst the night before the examination, and wished to put up there and dine and sleep at the 'Duke of York Hotel;' but there were so many other people there for the same purpose that they could get no accommodation, and they had to come back to a small public-house close to the Farnborough Station, called the 'Tumble Down Dick,' to dine and sleep there. Mr. Danby Seymour, who had come down for the purpose of assisting his nephew, and introducing him to the examiners, left when he found Colonel Greenwood had charge of Roger; he merely dined with them, and went back. They returned the next morning to Sandhurst, and were successful in getting a

room at the hotel. There were many other persons there who wanted accommodation and breakfast before the examination came on, and Mr. Radcliffe and his son happening to be there, Colonel Greenwood begged them to come in and have their breakfast in the room, though he had engaged it for himself. Those were the facts, and Colonel Greenwood says: "Colonel Lushington led the conversation to the subject by saying, 'Now tell us about your going to Sandhurst.' The defendant said, 'He had gone there with me, and that young Delmé Radcliffe had luncheon there.' I shook my head, whereupon he said, 'Do you mean that he did not have luncheon with us?' I said, 'No, we did not dine there, nor did we sleep there.'" "May I say," the witness asks, "that he at first said we had slept at Sandhurst? Q. One desires that you should tell us as near as you remember everything, however minute it may be, that passed between you: When did he say that?—When telling the story Colonel Lushington had asked him to tell, he said we had put up at Sandhurst, and that we had dined there. I said, 'Did we sleep there?' and he said, 'Yes.' Q. Did he mention the tavern you put up at?—I think he said it was, 'The Duke of something' we put up at. Q. Do you remember anything further he said?—When I said we did not sleep there, he said, 'You are alluding to the Tumble Down Dick.' We were then changing carriages at Woking, and we entered a new carriage. I said, 'You were saying something about the "Tumble Down Dick."' Q. You were changing carriages, and then got again into the carriage with Colonel Lushington, and the defendant and you began the conversation, as I understand, by saying, 'We were saying something about the "Tumble Down Dick?"'—Yes. Q. What did he say?—He said, 'We went there after the examination.' I said, 'Did you see anybody there?' He said, 'No one in particular.' That, I think, was all about the 'Tumble Down Dick.'"

Now you see that was exactly reversing the facts as they occurred. They went to Sandhurst, they could not get accommodation, and in consequence they went back to the 'Tumble Down Dick,' to dine and sleep, and returned to Sandhurst in the morning to breakfast. The defendant puts it exactly the reverse way. He had got hold of the story, but he tells it wrong. He says they went to Sandhurst, dined and slept there, and after the examination the next day went to the 'Tumble Down Dick.' That is exactly what they did not do. The question, however, remains, whether it is not a thing about which a man might at the end of so many years make a mistake, and whether you would attach any great importance to such a mistake, if made.

There is one other subject on which the Colonel tested him. It so happened that when Roger was at Tichborne, in 1849, Colonel

Greenwood determined to give up what he had previously done, namely, hunting in a scarlet coat. He had a scarlet coat which he thought it a pity to throw away, and he made a present of it to Roger. Whether it was necessary to alter it or not I do not know. That was one of the questions by which he tested the defendant. He said to the defendant, "Who gave you your first hunting coat," and he answered that it was Mr. Marx. Mr. Marx was a gentleman in that neighbourhood. Whether Mr. Marx ever did give Roger a hunting coat or not I do not know; but it certainly is a mistake to suppose Mr. Marx gave him his first hunting coat, because Colonel Greenwood, who had seen him out hunting, and of course knew whether he hunted in scarlet or not, recollects that the first hunting coat Roger ever had was a hunting coat he gave him, which had been his own.

To the evidence of the foregoing must be added that of the witnesses from France, Mons. Chatillon, Mons. d'Aranza, the Abbé Salis, the Père Lefèvre, and the former servant Gossein. These are the persons who knew him the earliest, and who saw him the last before he left on his inauspicious voyage. All had been brought into such close and intimate relations with him, that, as regards the matter of personal identity, their opinion must be entitled to the highest respect. They are all clearly and positively of opinion that the defendant is not Roger Tichborne. Three of them, Mons. Chatillon, the Père Lefèvre, and Gossein, have spoken to facts of great importance, to which I either have already called your attention, or shall do so at the appropriate time.

This constitutes the evidence for the prosecution in respect of that part of the case.

We now come to the evidence for the defence, and in like manner I propose first to take the relations; then the friends and the other persons who correspond with the different sets of witnesses who have been produced on the part of the prosecution, in the order in which I have passed them in review.

Now the evidence for the defendant to which I am about to direct your attention, like that which we have just been going through, divides itself into two heads: first, that which relates to the recollection of the witnesses of the personal appearance of Roger Tichborne and their judgment as to the identity of the defendant as formed on a comparison of his appearance with their recollection of Roger; secondly, evidence relating to conversations had with the defendant, in the course of which he exhibited knowledge of events in the life of Roger Tichborne, or of facts with which Roger must have been acquainted. Here, again, as with the witnesses for the



prosecution, I could have wished, had it been possible, to keep these two heads of evidence distinct, as the opinions of the witnesses, based on their recollection of Roger is one thing, and the knowledge of the defendant of things which Roger must have known is another, and one which must form a separate and all-important chapter in the development of this case. But in order to keep the two branches of the evidence separate, I should have had to go over the evidence of a large number of the witnesses a second time, which would have been attended with considerable inconvenience and loss of time; for which reason I have thought it better, here, as before, to take the witnesses as they come, asking you, while I do so, to be good enough to distinguish between the witnesses who speak to opinion only, and those who speak to conversations and knowledge of facts manifested by the defendant. With regard to evidence of opinion, on the one side or the other, it is necessary to consider, in addition to the question as to how far the witness is deserving of credit, the opportunity for observation he may have had, and his capacity for forming a correct judgment. As regards ignorance or knowledge shown by the defendant, we have to consider how far the ignorance may be accounted for by failure of memory, and how far the knowledge may be real, or factitious as derived from extraneous sources.

Now Mr. Biddulph is the only relation, if he can be called a relation, who has come forward to say that the defendant is Roger Tichborne, and Mr. Biddulph had only one opportunity in the whole course of his life of becoming acquainted with Roger Tichborne, and that was on the occasion of Roger's short visit to Bath in the month of January, 1849, soon after he left Stonyhurst. Mr. Biddulph was at that time staying with his mother and sister at Bath. As a relation of the family (I believe a distant one), he of course made the acquaintance of Roger, and he says that during the fortnight Roger was at Bath they were thoroughly intimate. Roger, as you remember, had gone there to see his uncle Robert, and to a sort of family gathering which there was then at Bath, and he was living at an hotel, and at that hotel Mr. Biddulph, besides seeing him every day, frequently visited him. Upon one occasion he had lunched with him at the hotel, and instead of going to the smoking-room of the hotel to smoke, they went to smoke in Roger's bedroom, and Roger produced two of what are called death's-head pipes. When Mr. Biddulph went to see the defendant, which he did in July, 1867, he did not at first thoroughly recognise him, though he thought he recollected the upper part of his face, and had a vague impression that he was like the Tichborne family. He is asked: "Did you recognise the defendant when you first saw him at Croydon, or were you some time in his company before that came

about?—I thought I recognised some of the features of former days, but I was impressed with a general likeness to the Tichborne family, or, I should rather say, to members I had known of the Tichborne family. Dr. KENEALY: You divide your recognition into two parts—first of all a recognition of his features; secondly, a recognition of the features of certain members of the family?—Yes. Q. And what part of his own features did you immediately recognise Roger Tichborne in?—The upper part of the face. Mr. JUSTICE LUSH: What do you define as the upper part?—From about half way down the nose, the brow, and the eyes—the set of the eyes. Dr. KENEALY: And in what did you see the Tichborne features generally?—A certain twitch in the forehead and in the eyes, which I noticed in other members of the family. The LORD CHIEF JUSTICE: In which of them?—In Mr. Robert Tichborne, the uncle, to a very great extent; in Sir Edward Doughty partially; in Sir Alfred Tichborne partially. Q. Any one else?—No, that is all.”—So that Mr. Bidulph had failed to observe any twitch in Roger Tichborne.—“Dr. KENEALY: Was there anything particular in the walk of Roger when he was a young man?—I cannot recollect that.” He next speaks of his voice. “Q. What do you say to his voice?—In his voice I recognise a similarity to the voice of Alfred. Q. Could you describe it?—I could have fancied sometimes at the end of his sentences it was Alfred speaking—a peculiar drawl at the end of his sentences I detected, which Alfred had.” Here again, oddly enough, the similarity he speaks of in the voice is not to the voice of Roger, but to that of Alfred. Then comes the conversation he had with the defendant. “Q. Did you say anything to him about when you had met him first?—I asked him where I had met him. He said at Bath. I said, ‘You were staying at your uncle Robert’s.’ Q. What did he say?—‘I was by the way staying with him, but I was staying at an hotel.’ Q. What did you say to that?—I said, ‘At what hotel were you staying?’ He answered, ‘I forget; but it was the White something.’ Mr. JUSTICE LUSH: His words were, ‘I forget?’—‘I forget; but it was the White something.’ Dr. KENEALY: What did you say to that?—I said, ‘In Bath at that time there were three White somethings, the “White Lion,” the “White Lamb,” and the “White Hart;” can you tell me which of those hotels it was?’ He answered, ‘Yes, it was the White something nearest the market-place.’ Q. Was he able to give any other account of it?—No. Q. What place was it he really was staying at?—He stayed at the White Lion, which was the only hotel bearing the name of ‘White’ anywhere near the market-place.” Then the witness asked him if he remembered his (the witness’s) mother and sisters, to which the defendant answered that he did, and that he used to visit them and walk with them. Then comes the

conversation about the death's-head pipes. "Q. Did you say anything more about your once coming to lunch with him at the hotel?—I did; I said, 'Do you recollect my coming to lunch with you at your hotel?' He said, no, he did not. I said, 'But I did, and after luncheon, for some cause or other, we smoked in your bedroom, not in the usual smoking-room; we did not smoke cigars, we smoked pipes.' Mr. JUSTICE LUSH: These are your own words?—These are my words; and I said, 'had you any peculiar pipes at that time?' He said, 'I had two clay death's-head pipes.' I said, 'That is what I have come to learn;' or words to that effect. I recollect the death's-head pipes made more impression on me than anything else. The LORD CHIEF JUSTICE: Did you say that at the time?—I said that to him at the time." The witness explains that the reason those pipes made such an impression on him was that they were the first pipes of that form he had ever seen. He further says that upon a later occasion he became godfather to the defendant's son, and the defendant at that time was living, or at all events staying, near Alresford, and that after the christening the defendant proposed to drive him round the park, and in the course of the drive they came to a gate, whereupon he (Mr. Biddulph) said, "That was the way you took when you rode with Miss Kate Doughty to Brookwood;" on which the defendant corrected him, saying, "No, I know the way Colonel Greenwood always rode," and afterwards pointed out the road, saying, "That is the road you took, and you passed up there by the Lover's Seat." Then, says the witness, "I recognized the road perfectly."

With regard to the alleged twitch of Roger Tichborne he is asked by Mr. Hawkins, "Did you say when you went down you did not remember Roger Tichborne had any twitch in the eye or the brow?—I do not recollect Roger Tichborne having the twitch so much as I recollect other members of the family." Then I reminded him that the question was "whether, when he went down to Croydon to see the defendant, he remembered that Roger Tichborne had any twitch in the eye or brow?—I do not think I did, my Lord. Mr. HAWKINS: Do you recollect any feature of his face, I do not speak about the family, but Roger Tichborne?—I cannot recollect the general aspect of his face. Q. Any particular feature?—The upper part of the face I must have recollected, because it struck me there was a likeness at once. Q. Don't say it must have done, but did you recollect it?—To the best of my belief I did, by the likeness that struck me. The LORD CHIEF JUSTICE: The likeness of what?—The upper part of the face. Mr. HAWKINS: What part of the face?—From the middle of the nose, the brow or forehead, and the eyes and the eyebrows. Q. Are you sure about that? When you saw him, you could not positively say you saw any likeness then, not any likeness when



you saw him?—I have said already——*Q.* I want to know? *Dr. KENEALY:* Do let the witness answer. *The LORD CHIEF JUSTICE:* It is not an answer. *The WITNESS:* I have said already, at such a very distant period I would not swear to a man merely by likeness when a man is obviously so much altered. *Mr. HAWKINS:* I asked you when you actually saw him if you saw any likeness?—I thought I did. *Q.* But you would not swear you did?—Because I never swear to anything that I cannot vouch to being the truth. *Q.* You will not swear now you saw it?—I swear I thought I saw it. *Q.* And yet you do not remember the twitch?—I recollected it in other members of the family. *Q.* I am speaking of Roger Tichborne?—I do not think I recollected the twitch in Roger Tichborne. *The LORD CHIEF JUSTICE:* You say you do not remember a twitch in Roger?—Not in Roger.” Strange to say Mr. Biddulph remembers neither the twitch nor the peculiarity in the gait of Roger Tichborne, upon which so many of the witnesses for the defence so strongly dwell.

Nevertheless, the evidence of this witness is very deserving of consideration. If the defendant, without acquiring any knowledge from without, recollected that as far back as 1849, when he was staying at Bath, he was staying at an hotel, and recollected, although he did not remember whether it was the ‘White Hart,’ or ‘White Lamb,’ or ‘White Lion,’ that the particular hotel at which he stayed was an hotel at the corner of the market-place, it would be very strong to show that the man who recollected those circumstances must be Roger Tichborne. But that statement becomes somewhat shaken when you come to see the cross-examination and the result of it. It seems that before he went down and had this meeting with the defendant, Mr. Biddulph, who was a client of Mr. Norris, the Dowager’s attorney, had gone to dine at Mr. Norris’s, and there met a Mr. Tucker, the gentleman who was engaged in raising money for the defendant, although Mr. Biddulph says that fact was not then known to him. It appears that at this dinner-party, at which Mr. Tucker was present, there was a good deal of conversation upon the subject of the possibility of Mr. Biddulph recognizing Roger Tichborne in the defendant, and that he said that he had some questions by which he should be able to test him, and that on his saying he had met Roger Tichborne at Bath, they asked him as to what had passed there. “In the course of your conversation did they ask you where you had seen Roger Tichborne?—I think so. *Q.* That is to say in what room, or in what house?—I believe so, very likely. *The LORD CHIEF JUSTICE:* You say they did ask you?—I have no doubt of it. *Q.* In what room?—They asked me, no doubt, something about it, and no doubt I answered as to where I met him, and the period I met him at.

Q. The question is a simple question, did they ask you in what house or in what room you had met Roger Tichborne?—I do not know. I can only tell the general tenor of the conversation that took place; as to the actual words that took place, I have forgotten all about it. Q. The question is specific, whether they asked you in what house or what room you had seen Roger?—I cannot tax my memory with it all. Q. Do you mean you have not the least recollection whether they did or not?—No. Q. Do you recollect the ‘White Lion’ being mentioned?—No. Q. Are you sure it was not?—It may have been. Q. Do you remember their asking you how you had amused yourself with Roger Tichborne?—No. Q. Will you undertake to say you did not tell them?—No. Q. You will not undertake to say you did not tell them?—I should be very sorry to undertake to say a thing if I had forgotten. Q. Do you remember whether smoking with him was mentioned?—I might have mentioned it. The LORD CHIEF JUSTICE: You may have said, ‘I smoked with him?’—Yes. Mr. HAWKINS: And in his bedroom?—I do not know; I may have. Q. And that you smoked cavendish tobacco?—(No answer.) Q. I have a reason for putting it to you?—I perfectly understand it. Q. Is that so, may you have said it?—I should not wonder if I did. Q. Nor should I, ‘Out of a pipe which struck you at the time?’—Very likely. Q. I put another question: and did you not say it was like a death’s head?—I rather think I did not. Q. Will you swear you did not?—No, I will not; but I rather think I did not, because when I went down to Croydon I recollect, when I was speaking to him about the death’s-head pipe, having thought of that as something no one knew, and if I had been telling any one about it, I should not have had that idea in my head. Q. Will you undertake to say that you did not?—No; but I am almost certain of it, because I recollect perfectly well I never recollected mentioning that to Mr. Anthony Norris, nor to Mr. Tucker, and I recollect when I came into the room at Croydon now, I told the general tenor of my visit, that I have got something for him that will—— Q. You have said you might have said you smoked with him?—Oh, yes. Q. Cavendish tobacco, and out of a pipe which struck you at the time—— Mr. JUSTICE MELLOR: Did you say so? out of a pipe which struck you at the time?—I do not recollect having said anything of the sort. Q. I thought you did?—I said, ‘I might have said.’ Mr. HAWKINS: ‘I might have said?’—My impression is that I did not give them a hint of it, because I recollect when I mentioned the death’s-head pipes I intended to keep that for myself and test him more or less by that. Q. You did not know you were going then?—I did not know I was going. Q. Not when you met them at dinner?—No; but I did not want to tell everybody beforehand.” Then it came to this, and I tried to sum

up the result of the cross-examination in this way. "Do I understand you that though you do not think you mentioned the death's-head pipe, you did mention there being something peculiar about the pipe he was smoking?—I think very likely I said I have got something in my head. I may very likely have said something about some pipes I smoked with him, that I can test him by, that no one knows, or something of that kind; but I do not believe mentioning it to any one until I got into his room that they were death's-head pipes. Mr. HAWKINS: Did not you also say something about the death's heads?—No, I do not recollect anything. Q. You would not say there was not?—No, I would not swear to anything; that is my impression. Q. You are a gentleman of intelligence and memory, and I want to see. You will not swear you did not speak of the death's heads?—No, I can almost swear I never said anything about the death's heads. My impression—— Q. But still you would not like to go that length—— The LORD CHIEF JUSTICE: Let him answer. The WITNESS: I should like to go the length of truth and no further, and that is the reason I am not diverging. My impression is that I might have said something took place between me and Roger Tichborne about smoking pipes, that I could bring to his recollection; and my impression is also that I never mentioned to any one the absolute shape of the pipes until I mentioned it to Sir Roger Tichborne at his house."

Next, with regard to the twitch. In Mr. Robert Tichborne he says it was constant; in Sir Edward and Sir Alfred occasional. "Q. Do you remember sufficiently well to say whether the raising of the forehead from the eyebrow in Sir Edward and Sir Alfred occurred at a time when they were not talking, and were otherwise in a complete state of repose, or was it produced by the excitement of conversation?—I have seen it, I think, without conversation, more especially during the conversation, but in Mr. Robert Tichborne it was constant without conversation at all; he very often could not keep his eyes quiet; he was always twitching his eyes. Q. According to your view with Mr. Robert Tichborne it was constant?—It was constant: he could not help it; with the two others it was, I think, principally in conversation that I have seen it. Q. And it did not include the eye, it was only the brow?—It was only the movement of the brow." Then he is asked as to his final conviction. "Q. You say you went away under the impression that he was your cousin?—Yes. Q. It was a death's-head pipe that settled you—— It was more than that. Q. Convinced you?—If I may be allowed to explain myself, I had gone down having thoroughly in my head the theory that had been put before me by every one, that the Claimant was either coached by Bogle or had the diary of the supposed lost Roger. When he could not put the name



of the hotel he was staying at, and yet he described the place he was staying at, where I knew he was staying at, it established in my mind an identity of person with place which I was quite unprepared for. Q. When he mentioned the hotel near the market-place?—When he mentioned it being in the market-place. I thought if it had been either Bogle's teaching, or if it had been from the diary of the supposed lost Roger Tichborne, he would have answered me pat, 'It was the "White Lion;"' but when he said, 'It was the White something,' and could not put the name of the hotel, and then described the place he was staying at, my mind was disabused of one theory by the identity of person with place. It was then I began to rather change my mind upon that, with other things he told me about the family. Q. Are those things you have told us?—They have not been put either in examination or cross-examination. Q. But is there anything else?—Well, general things. I spoke to him about his different relations, and he seemed to know about them. There were a number of things that never came out in conversation. Q. It is a great pity, running on at the rate you are going now, that you do not tell us those conversations?—I think I said in my affidavit that other things at the interview at Croydon convinced me he was the man, as well as in his telling me about that. Q. It is important that the jury should know what those things are, in order to see whether the effect they produced upon your mind was the effect they ought to have produced?—I asked him about his different aunts and uncles, and his relations. I forget at this period. Of course I asked him about the Dormers and his different aunts and uncles, and those sort of things. Q. Do you mean at the interview at Croydon?—At Croydon, and he seemed to answer very well; but it was the identity of person with place at Bath that more convinced me than anything—that coupled with the death's-head pipes, which I thought was only known to myself. Q. Had you mentioned the 'White Lion,' as the place where you saw him at Bath, when they asked you where you had seen him, at that dinner at Mr. Norris's?—Yes, I think it very possible I did. I think it is very likely I said he was staying at an hotel—that he was staying at the 'White Lion'—but I cannot recollect that at all. I only gave a general view of the case to them of my knowledge of him."

It is pretty clear that the witness, Mr. Biddulph, would not have taken upon himself to say this was Roger Tichborne if it had not been for that conversation. He admits, candidly, he had not sufficient recollection of him to be able to speak to his identity. He thought one part of the face like Roger, and one part of the face like the family; but he had no sufficient recollection to enable him to speak to his belief in the identity of the defendant with Roger Tichborne. But he has this conversation with the defendant, and the

defendant reminds him that, when at Bath, he was staying at an hotel: the witness asks him what hotel it was: he says the "White something," and although he does not remember the name, he describes the situation of the hotel. Now, if the witness, at the dinner at Mr. Norris's, mentioned the name of the hotel, which he (the witness) recollected, are we quite certain that the defendant was not told where that hotel was, and what the name of it was. We have Mr. Norris, the Dowager's attorney, who made himself busy in this matter, by getting the list of the Jesuit fathers at Stonyhurst; we have Mr. Tucker, the money-lender, who was busying himself on behalf of the defendant; and without going the length of saying that those gentlemen told him afterwards what had passed with a view of preparing him for the interview, they may have said quite innocently—"There is Mr. Biddulph, the relation of the family, who remembers having met you at Bath when you were staying at the 'White Lion,' or whatever it was, and says, 'he will be able to test you by the questions he is going to put to you about some pipes that you smoked here.'" It is a thing that might be said with the most perfect innocence, especially by any one believing in the real identity of the person. If you were talking with a man you knew to be an impostor you would avoid, unless you were a party to the fraud, giving him any information on a subject on which you knew he was to be tested. But if you were convinced you had got the real man you would not scruple to say, here is a man coming to test you, and he is going to ask you about some pipes. He says you were staying at the 'White Lion.' Again, suppose they had said, "Here is Mr. Biddulph who met you at Bath, and visited you at your hotel, and smoked with you: he is coming to ask you questions connected with your visit to that hotel." Suppose—(I am only putting it hypothetically)—suppose the man were not the true, genuine man, what on earth would be more easy to say than this: "By-the-by, Bogle, when we were all at Bath, and my uncle and aunt were there, what was the name of the hotel at which I was staying?" It would appear the most innocent question possible; and a man who was asked such a question would not suppose it was asked in the furtherance of a fraudulent design, but would think it was put in order to revive the recollection of something which had escaped the memory of the person putting it. How often does such a thing happen to any one. You may turn to somebody who may recollect some particular event, that was known to you in common, but which has for the moment escaped you, and you say: "By the way, such a thing has escaped my recollection; I wish you would tell me when or where it happened." It may be done with all the appearance of innocence, and all the information wanted may be extracted without disclosing or revealing the purpose which lies at the bottom of the question. That might be the case here. Mr. Biddulph will not say

he did not mention the name of the hotel; he will not say he said anything about the corner of the market-place, but somebody else might. "What was the name of the hotel I was staying at at Bath?—The 'White Lion'? Whereabouts is that in Bath?—Don't you recollect? why at the corner of the market-place." In various forms a thing of that sort might come to the knowledge of the man, so that he would be ready with the answer. Again, Mr. Biddulph's reason for saying the information could not have been obtained from Roger Tichborne's diary is singularly inconclusive. If it had been, he says, the defendant would have known the name of the hotel, and would not have said it was the "White something." Mr. Biddulph forgets that a lesson is not always perfectly learned, is not always perfectly remembered, especially if the question is unexpected at the moment.

Still that would not apply to the other crucial test, the death's-head pipes, unless Mr. Biddulph was incautious enough to let out before those gentlemen, Mr. Norris and Mr. Tucker, the form of the pipes about which he was going to interrogate the defendant. It is unlikely if he had that as a point on which he intended to question him, that he would reveal that to persons who might possibly repeat it afterwards. He would not, however, swear whether he did or did not.

But suppose Roger's pipes had been left behind. We know he had several; we know from his letter to Gosford that he had them sent to Upton; suppose there were any of them still remaining, and the defendant had seen them. There would be the solution of the difficulty. I do not say it is so. Far be it from me to say so. But if you find every now and then some startling difficulty, yet in the end the evidence appears to preponderate to such a degree as that you cannot let the difficulty stand in your way as to the result at which you must arrive, then one is naturally driven to see whether one can find a possible solution in circumstances more or less of a hypothetical character. My office is to present the case before you in all its possible bearings. It is yours to form your own conclusions according to what upon full and mature consideration your judgments shall approve of. We know Roger Tichborne's things were sent to Upton, sent in a large box. We know his pipes were among them. He mentions them specifically to Mr. Gosford. We do not know what became of the things or the box; they may have been preserved. The moment Mr. Biddulph said, "had you any peculiar pipes?" which of course would show that he was thinking, not of some common character of pipe, because he would not then be induced to ask the question, but of a pipe of some peculiar form and character, if there were any death's-head pipes remaining, and the defendant remembered to have seen them, he would answer accordingly. I only suggest these as possible solutions; if they are not acceptable to you I must leave the matter in your hands.



The witness was induced to make an affidavit on the 13th of July in favour of the defendant, and when the affidavit is looked at he is made to state that he believed his visit to Croydon to have been unexpected, as if he had taken the defendant unawares. But, when Mr. Biddulph came to be asked about it, it turned out that that was not so, and that he had been made to swear that unadvisedly; his attention not having been directed to the precise words of the affidavit to which he was swearing. If we find gentlemen prepared to frame an affidavit, not according to the exact truth, but in a manner which will suit the purpose they had in view, one is fairly entitled to infer they would not be over scrupulous in communicating to the man who was to be interrogated such information as would enable him to answer the questions in a manner satisfactory to the person asking him. These are the only materials Mr. Biddulph had for forming his judgment. I do not for a moment quarrel with the perfect honesty of Mr. Biddulph's conclusion. He is a gentleman of character and position, and I am quite sure would not do anything that he thought wrong, but I cannot help thinking that in making up his mind in the very firm and determined way he did, adopting the defendant at once against all the rest of his family, with the single exception of the mother, and expressing the strong, confident opinion he did, going down and standing as godfather to the defendant's son—upon no more than this one conversation about the hotel and the death's-head pipes—never having known Roger Tichborne longer than a fortnight, not having seen him for upwards of eighteen years, and not having a sufficient recollection of his appearance to speak very positively to his identity but for this conversation—he was going a long way indeed.

Mr. Biddulph is the only relation, and I think the only friend of the family who has spoken before us to the identity of the defendant; but there are a good many tenants upon the Tichborne estates, and a good many work-people, and people who had been about the house, who have come forward in favour of the defendant, and I have now to bring their evidence before you. I will go through it as rapidly as I can, that is to say as rapidly as is consistent with giving due consideration to the evidence as we go along.

Henry Welsh was a bricklayer at Cheriton, who knew Roger from the year 1845, when he was about sixteen. He used to be employed at Tichborne, and was upon one occasion repairing the roof of the chapel there, and he says Roger Tichborne took up his hammer and began chopping the lead gutter. The witness took the hammer away, and did not allow him to do it. The witness says that on seeing the defendant at Rous's, at Alresford, he asked him if he remembered using his hammer on the chapel roof. "Yes," says the defendant, "I remember chopping lead to make bullets."

It is quite true Roger might remember such a thing; and the thing is one which the witness would not be likely to invent, and therefore, it is a striking circumstance. He is asked, however (which will make all the difference), whether he, the witness, had made any mention of this to any one, so that it might have come to the defendant's ears. "Q. Had you mentioned to any one about Roger taking the hammer, and that you recollect, being a mischievous boy, his taking it out of your hands and hammering the gutter? Do you recollect that, had you been talking about it?—I might have done so, but I do not recollect it. Q. Do not you know very well that you did?—No, I do not know that I did. Q. You might have done?—I do not know that I did do it. Q. You might have mentioned it, I think you said just now. When you heard that Roger had come back to claim his own did you not say, 'I should know him, because I recollect his taking the hammer from me on the roof of the chapel?'—I do not remember saying so to anybody. Q. Will you pledge your oath you did not?—I do not remember saying so. Q. Is that all you will say?—Yes. Q. Are you sure he wanted bullets at that time?—No, I am not sure. Q. You are not sure?—No. Q. Would you just tell us how you spoke to the defendant about this little incident of his taking the hammer from you?—I asked him if he remembered taking my hammer on the chapel roof; he said, 'Yes, he did.' Q. What else did you ask him then?—Nothing more: he said, 'Yes, he did it, and it was to chop the lead up to make bullets.' The LORD CHIEF JUSTICE: Had you said nothing to him about the gutter or chopping the lead?—No. Mr. SERJT. PARRY: Did not you say something about the leaden gutter between the parapet and the roof?—Yes, I said about the parapet and the leaden gutter, that is where it occurred. Q. Did you tell him so?—No. Q. You simply asked him if he remembered his taking the hammer from you on the top of the chapel roof?—Yes." If the question was put in that form and answered by the defendant, no doubt it would be a striking fact in his favour; but the witness had made an affidavit. That was the usual course; whenever a witness had in any way acknowledged the identity of the defendant, they immediately got him to make an affidavit, which was then used for convincing the next person. Now he says in his affidavit, "I remember that Roger Tichborne was very larkish and mischievous in hiding the men's tools in fun. I used to see him some weeks every day in the week, and had many opportunities of seeing and knowing his free habits and manners, and I particularly recollect his forehead, eyes, and eyebrows, and that he had a peculiar cast upwards of his eye and eyebrow, and I also recollect that he had a particular gait with his right leg and foot"—We may be quite sure that was not that man's language—"On the 23rd March, 1867, I

went to the 'Swan Hotel' at Alresford, there I saw the plaintiff. I did not immediately recognize him at first, but"—then the "not" is struck out and it stands thus—"I did immediately recognize him, and after conversing with him and looking at him a little while, I recognized his forehead, the twitch in the eye on looking up, and the leg, and he is much stouter than he was when he left England in the year 1853. I fully recognized him as the Mr. Roger Charles Tichborne I formerly knew. I recollect that on one occasion whilst I was at work for his uncle, the late Sir Edward Doughty, the plaintiff took my lath-hammer and cut the lead away, and in the course of my conversation with the plaintiff at the said interview on the 23rd March, I asked him if he recollected cutting the lead from off the roof, and without my saying more, he said, Yes, I do; I did cut the lead and had it cast into bullets, and he said if the place was not destroyed, he could point out to me the very place from which the lead was cut. I believe it was the fact that he had cast the lead into bullets." So that instead of the witness asking the defendant whether he remembered taking his hammer, and the defendant answering, "yes, I did, to cut the lead from off the roof," it appears from his affidavit that it was he who suggested it, putting the question in that form. It involved not only taking the hammer, but taking the hammer to cut off the lead, which makes all the difference. This affidavit is also remarkable as showing the way in which these affidavits are concocted. "The plaintiff also told me at the said interview on the 23rd March, that he knew my wife, then Norris, and mentioned where she lived, and that he had been at her house scores of times for nails, hooks, and screws, and this the plaintiff told me without my in any way mentioning the subject to him. My wife was formerly Mrs. Norris, and did live where the plaintiff mentioned, and my wife has told me and I believe that the circumstances mentioned by him did in fact occur."

The wife was called, and she told a totally different story. She says she was formerly the wife of Norris, who was house carpenter at Tichborne. She used to do needlework at the house. She last saw Roger Tichborne before his going into the army when he was about nineteen. He came to her house for brass-headed screws and nails twice, or it may have been more, and when she makes an affidavit that is magnified into "he frequently came," and in the affidavit of the husband it is magnified into "scores of times." Yet she says she told Mr. Adams, the attorney, what she said here, that it was only twice that Roger Tichborne had been at her house. "I could not remember how many times—whether it was more than twice I do not remember. Q. You must have made some statement, I suppose, to him?—No, no particular statement, not how many times. Q. Do you remember what you said to Mr. Adams about Roger



Tichborne coming to your house for the nails and screws?—The same as I have said. *Q.* You told us you believed it was twice; you would not speak to more?—Yes. *Q.* Did you tell him the same?—Yes, I could not answer for any more than twice. *Q.* You told him all?—Yes. **THE LORD CHIEF JUSTICE:** I see by the affidavit she is made to say he frequently came. That is the way that in affidavits what witnesses really say is magnified to something more, and then signed and sworn to just the same.” It is really too bad when you find the statements of witnesses thus perverted and exaggerated, and that after they have once made their statement, they are made to swear to things in their affidavits which they do not attend to, and which, if they had been on their oaths in a court of justice, they would not have stated.

Then there is Mrs. Charlotte Holder, formerly charwoman at Sir Edward Doughty’s, where she frequently saw Roger Tichborne, occasionally speaking to him when cleaning his room. She says he was very thin, with dark hair, and he rather limped. She saw the defendant walking with Mr. Hopkins, in Alresford, and she was sure he was a Tichborne by his walk, and says his walk was most like Sir Henry’s; but still she says she did not acknowledge him and recognize him in that sense until she spoke to him and heard his voice. “I wanted to hear his voice. I wanted to be particular. I wanted to swear to him before I could recognize that he was Roger Tichborne.” She is shown the photograph, and will not acknowledge the likeness, and you see if a witness has made up his or her mind, especially if it is a female witness, you cannot shake it out of them. She will not acknowledge the likeness in the photograph, but, when asked whether the defendant is like Roger, she answers, “He is Roger Tichborne; therefore he must be very like him. He is Roger Tichborne. *Q.* Do you say he is very like?—He is Roger Tichborne, and I cannot say more than that.” Then **SERJ. PARRY** tries to press her, and says, “Just try and see whether you cannot say a little more. Do you mean to say, in your opinion—you are called to give us your opinion as an intelligent woman—that the defendant is at all like your old acquaintance Roger Tichborne?—He is. *Q.* Like him?—He is Roger. *Q.* Is he like him?—Well, he is Roger. I have proved him in my mind that he is Roger, and I know he is from my heart.” I believe that woman is as honest as can be. She has got him in her mind and heart, and all the cross-examination that Serjeant Parry might have applied to her for a month to come never would have got it out of them. She has but one answer—“He is Roger Tichborne.” Then there is a talk about the voice. “*Q.* What was Roger Tichborne’s voice? do you recollect it?—He used to speak gruff; rather gruff he used to speak.” If there is one point on which the evidence is pretty unanimous, it is

that Roger had a soft mild voice. She makes it out gruff. “ Q. Does the defendant speak gruff?—He speaks rather gruffer than he did when he went away; rather gruffer, but not much. Q. You have described Roger’s voice as gruff, would you describe the defendant’s? Mr. JUSTICE LUSH: Gruffer, she says: it is comparative. Mr. SERJT. PARRY: Gruffer than Roger’s?—When he went away. Q. Would you say the defendant has a gruff voice in your opinion rather?—Yes. Q. Do you think it is a husky voice? Do you know the meaning of the word husky?—It is not a clear voice. Q. And is that the reason you recognized him?—No, not particular; not that one thing I did not recognize him from. Q. You say you know that you recollect him by his voice, and until you had seen him and spoken to him you did not know? The LORD CHIEF JUSTICE: Until she had spoken to him. Mr. SERJT. PARRY: Until you had spoken to him you did not know him for your old acquaintance Roger Tichborne: you have told us that?—Yes. Q. Do you mean to say that you recognize the defendant’s voice as the voice of young Roger Tichborne?—Yes. Q. The same voice?—Yes. Q. How used Roger Tichborne to speak?—He did not use to speak so gruff as he does now quite. Q. Did you notice nothing particular about his accent?—No, I did not.” Then she said she did not notice any difference between Roger Tichborne’s manner of speaking and anybody else’s, but all the opportunity she had of judging of the identity of the defendant’s voice was upon one occasion when she spoke to him, and all that passed between them was that he asked how she was, and upon that she was prepared to say he was Roger Tichborne. I have no doubt her conviction is as honest as it is unalterable.

Mrs. Noble was the dairywoman at Tichborne, her husband being farm bailiff. Of course she often saw Roger Tichborne, but was not otherwise brought into contact with him. She saw the defendant on the 29th December, 1866, from the window of her dairy, when he was taking that drive round the premises at Tichborne in the dog cart with Rous. Looking from the window of the dairy, she only saw the upper part of his face, but says she recognized him at once. “ Q. How did you remember him?—By the features and general appearance. He was stouter than when he left, but I remember him quite well. Dr. KENEALY: Do you remember him by nothing but his general appearance?—The walk, and the voice when I heard it. Q. What was there about his walk?—There was a little something in it that I could remember it quite well; the Tichborne walk. The LORD CHIEF JUSTICE: Can you tell us what that was?—like Sir James’s. If you can give us any description of what there was peculiar in the walk, it would be desirable?—A little weak, with one knee turned in a little bit sometimes. Q. One knee turned in a little bit?—Yes, rather a turn in the knee.” Then

Dr. Kenealy asks: "Did any of the family you remember have the same walk?—Sir James had the same walk." Now we know Sir James was lame, and had a peculiar walk, hardly putting his heel to the ground and walking on the toe; suffering from sciatica, which had drawn up the leg; and if that is what she meant, Roger Tichborne's walk could hardly have been that. She sees him again walking in Alresford, but as she tells us she only saw his back; but here again she says she knew him—"I knew him by his back; it was a Tichborne back." Mr. Hawkins asks: "As I understand, you saw only his back?—No. Q. Now do you mean there was anything about his back that you recognized?—Yes, it was very much like the Tichborne family, Sir James. Q. Was it anything like Roger's back?—It was the same back, I could see, only got stouter; but not near so stout then as Sir Roger is now. The LORD CHIEF JUSTICE: But you say the back when you saw it was like Roger's?—Yes, it resembled Sir James's very much; the Tichborne back. Mr. HAWKINS: You recollect the back?—Of the Tichborne family. Q. You called it the Tichborne back?—Yes. Q. You would have known him the first morning, if the gig had been turned the other way?—I do not know, I cannot say that; I should like to have seen the face first. Q. Of course; but do you think you would have known him by his back?—Well there is a likeness in the back, a great likeness to the Tichborne family." So that, according to this witness, not only was there a walk peculiar to the Tichborne family, but a peculiar back also; and in both these particulars this good woman finds a resemblance between the defendant and the family. Then she professes to remember the voice, "the quiet soft voice of Roger." She remembers only a very slight French accent in him; but she acknowledges that that was altogether gone in the defendant. She saw him a third time at the 'Swan,' when her husband had some conversation there with the defendant.

Then Henry Noble the husband is called, and he says that Roger's walk was very like Sir James's, who used to drop the right knee. He says, "I saw the defendant walk across the field, and I said his walk made me think of Sir James. I saw him on the Alresford platform at the beginning of February. I heard him talking, and I thought I knew the voice. The defendant came up and said, 'Hollo, there is some one I should know.' I said, 'Yes, I should think it was;' and he said, 'Why it is Mr. Noble,' and I said, 'Yes, and this is Roger Tichborne, I will swear.' Q. What made you say that?—Because I knowed his features. Q. Did you know his voice?—I knowed his voice and his features." He had been told that Sir Roger Tichborne was coming down. He sees a stranger, and the stranger says, "Here is some one I should know, this is Mr. Noble." Of course it occurs to his mind it must be Roger



Tichborne, but he goes further, and says he knew the features and the voice. Two or three weeks after that, the defendant sends for him to the 'Swan,' and then, says the witness, "he asked me if I remembered his grubbing up the old oak moor"—You remember we heard a great deal about that old oak moor—"moor" in Hampshire signifying the old stump or root of a tree. *Q.* What did you say?—I said yes I did. *Q.* What did he say upon that?—He said, 'But I never finished him.' *Q.* What did you say?—I believe you did finish him, Roger Tichborne. *Q.* What did he say?—He said, 'No, Mr. Noble, I beg your pardon, I did not finish him.' Then he is asked, "Had you ever told anybody before then that you had seen him grubbing at this moor?"—No. *Q.* How long were you in his company at that time at the 'Swan'?—About three quarters of an hour it might be. *Q.* Did you ask him questions?—Yes. *Q.* Questions about what?—He asked me whether I recollected old Finnis grubbing this moor. I told him no, I did not recollect at the time. I called several names over, and he said it was none of them. He said it was a man of the name of Lillywhite, brother to the one-armed fellow. This was a labourer that finished grubbing the moor." The witness denies having mentioned the fact to any one, and indeed says he had forgotten the circumstance until the defendant reminded him of it. He said nothing about it at the first trial, but he accounts for that by saying he was not asked about it. Whether the defendant may not have heard of this grubbing up of the moor from some one may be doubtful. It appears to have been known to a man of the name of Lillywhite, and it lasted some time according to the accounts they give us of it. Roger Tichborne was employed at it for some time, and it must have been known to the witness as the bailiff. It is a remarkable thing that the defendant should have sent for him, and have selected this particular topic. This Noble is no doubt a respectable man, although he may be a somewhat biassed witness, who evidently takes a strong view of the matter. This is what he says on cross-examination as to the voice and accent: "You say you recognized him by his voice when talking to Mr. Hopkins; is that so?—Yes. *Q.* What sort of voice was it?—A soft voice, as he always had. *Q.* Was that the reason you recognized it, because of the soft voice?—Yes. *Q.* Was that the only reason?—That was the reason. *Q.* Was that the only reason?—Yes; it was the only reason. *Q.* What do you mean by a soft voice?—Some people have a rough, gruff voice; Roger Tichborne always had a very soft one. *Q.* Then it was the opposite to rough?—No. *Q.* Soft?—Yes. *Q.* You say some people have a rough voice, and Roger's was not rough?—A soft voice. *Q.* Do you mean clear?—Yes. *Q.* Did the Roger you knew, before he left England, speak broken English: you understand what broken English is very well?

—I know a little about it. Q. Did he speak broken English?—Yes. Q. Did he speak with a strong French accent?—He did. Q. Before he left England?—Yes. Q. Now, when you heard the defendant speaking to Mr. Hopkins, was he speaking in broken English or with a strong French accent?—Not like it was before he left England. Q. Was he speaking with any foreign accent that you heard when you heard him speaking to Mr. Hopkins, on the platform?—There was no particular French accent in that. Q. Was there any French accent at all?—No. Q. Did not that startle you, did not that surprise you, that young Roger Tichborne, your friend, had lost all his French accent?—No. Q. Did you think of that at the time?—Yes. Q. Had you heard that he had lost his French accent before you saw him on the platform?—No. Q. Did not your wife tell you that he did not speak in the same way that he used to do?—She never had no conversation with him before that. Q. She did not say she heard it, or did anybody tell you that?—No. Q. You say it did not at all surprise you, and you recognized the defendant by his soft voice, the same as Roger's?—Yes. Q. In the interview you had with him at the 'Swan,' about the grubbing up of the tree, what voice did he speak in?—A plain English voice, much more than he did before he went away. The LORD CHIEF JUSTICE: You are putting it now as a matter of comparison; do you mean he had lost all trace of French accent, or some of it still remained?—Yes, my Lord. Q. Which of the two do you mean? If he had lost all the French accent, none of it could remain; but he may have lost it partially, and some would still remain; which do you mean?—I do not know there was any. Mr. SERJT. PARRY: Did you or not notice any French accent at all about him when he was talking about grubbing up the old oak moor?—I did in some of the words." Then Mr. Serjeant Parry observes—"That seems contrary to what you answered to my Lord?—I did not understand my Lord. The LORD CHIEF JUSTICE: What do you mean? When he talked to you about grubbing up the oak moor did you detect any of the old French accent, or was it all gone?—Not much; very little, if any. Q. Then there still remained a little?—In some of the words: when he said 'Vernal's.' Q. What did you detect then?—It being a little Frenchified; the same as he used to talk; he could not speak it plain. Mr. JUSTICE MELLOR: Could you imitate it?—I do not know that I could imitate it. Mr. SERJT. PARRY: You noticed that when he said 'Vernal's' he spoke it with a foreign accent?—He did not speak plain English that word. Q. Do you mean that when he spoke the word 'Vernal's' he spoke with a French accent?—I say he did not speak plain English, nor call 'Vernal's' plain English."

Now the judgment of a witness of this kind as to the pronunciation of a particular English word cannot be relied upon as going for

very much. It is quite possible that in such a word as *Vernal*—which strikes me as an instance of what I am going to say—I do not know how that word is pronounced, whether *Vernal* or *Vernal*—a man unacquainted with the proper pronunciation of the word, that is, not knowing the syllable on which the accent is placed by people who are familiar with it, and while they said *Vernal* calling it *Vernal*, or if they called it *Vernal* pronouncing it short and saying *Vernal*, might produce in the mind of a person hearing him the notion of a foreign pronunciation. When one hears of one or two words being pronounced in a Frenchified way, it is always important to know what the words are, in order that one might see whether it amounts to anything more than that in pronouncing a name the accent was improperly placed. We may otherwise have credit given for a French pronunciation where the word is simply mispronounced through ignorance.

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## ONE HUNDRED AND EIGHTY-SECOND DAY.

*Thursday, February 19, 1874.*

THE LORD CHIEF JUSTICE: Gentlemen, we were dealing yesterday with the Hampshire witnesses, the tenants and people in the neighbourhood of Tichborne, who had given evidence in favour of the defendant, and I had just concluded the evidence of Henry Noble. I now come to that of Thomas Lillywhite, a witness who also speaks of the grubbing up of the old oak moor; and he says he remembers when Roger was grubbing this moor; and that while he was working at it, the axe with which he was working broke, and he desired Lillywhite, who was a boy or young man standing by his side, to take the axe to the smith's to get it repaired, and gave him a half-a-crown for that purpose. Lillywhite took it to the smith; and the smith charged him a shilling for it; and he brought one-and-sixpence change back, and Roger told him to keep it. That is a circumstance likely to make an impression on a young fellow; and accordingly he recollected it, and he says when he heard that Roger Tichborne had come home he went to have a talk with him about it. When they meet the defendant remembers the circumstances. But may it have been that the witness had been talking about them? Of course the facts would make an impression on his mind, and he would very likely talk about them. When men of this class were at the public-house in the evening, and the report came, "Here is Roger Tichborne coming back again, the man we all supposed to be drowned—he is found, he is coming back," each man would tell what he had personally known concerning him. This man would probably say, "I recollect him



very well ; I recollect the time when he was grubbing up the old oak moor, and I was standing by him and the axe broke, and I had to take it to the smith's, and he gave me half-a-crown to pay for it, and when I brought him back the one-and-sixpence he told me to keep it." It is a little incident which would make an impression on the mind of a rustic, who has not much variety in the events of his life. This having happened to him with the young heir of Tichborne he would recollect it, though the other most likely would not, and the moment he heard Roger was coming back, before he got to the second pint of beer, the story would be out ; and having been told in that way it is told again by somebody else, till it reaches the ears of the man who is come home, or of some of the gentlemen who are getting up evidence, and preparing affidavits, and so it becomes available for the purpose of making the man believe that the person who puts this question to him, or to whom he puts the question, and who gives him the answer, must be the true man, because he totally forgets that he has told the story to other people, and treats it as a matter only known to himself. Not that this was necessarily so in this instance : it may have been the result of perfect memory unaided by assistance from without. One has to judge which it is from all the circumstances. These simple-minded people are easily led to a conclusion as to people in whom they may take a personal interest ; but those who have to sift evidence and weigh it at its real value, must look a little further and judge with a larger and more comprehensive view.

The next witness is James Morley, who was in the service of Sir Henry and Sir Henry Joseph until 1838, and his evidence is somewhat remarkable. After he left the service of Sir Henry Joseph he set up in business, and used to serve the house with malt, and having been butler there for some time he used to come and bottle their ales and wines. He knew Roger as a child, and remembers afterwards when he had grown up, seeing him out riding or hunting. When the defendant came over to this country he saw him in the October of 1867 ; he had received two or three letters from him asking him to come and see him at Alresford ; and at last he went, and he says, "When I first saw him I thought it was not him, but afterwards I began to recognize the upper part of his face, and I thought the lower part was like his uncle Henry's." Then a conversation takes place between them, but it is extremely difficult, following the evidence, to ascertain from the witness the part he and the defendant each took in the dialogue, and of course I need not say that makes all the difference. If the answer is suggested by the question put it is of little value ; on the other hand, if the question does not indicate what the answer should be, then the answer may be very important. Dr. Kenealy asked him as to the conversation, and he says, "We

sat down and had a talk about the family estate. Q. Tell us what took place about the family estate?—It was about changing some land that was at West Tisted. Q. What was said about it?—I know his father very much disapproved of it. The LORD CHIEF JUSTICE: Is this part of the conversation?—Yes. Q. Just repeat it then, if you please?—He asked me if I recollected when they changed the land at West Tisted, and I said yes, and his father, Sir James, very much disapproved of it. Q. You said that to him, did you?—Yes. Q. Did you say, ‘your father,’ or ‘Sir James,’ or what?—‘Sir James,’ at least he was Mr. James Tichborne then.” Then Dr. Kenealy asks, “What did he say to that?—Sir James did not like it because it cut the estate almost in two.” Then I say, “What we want to know is what passed between you and the defendant: do not tell us what you know independently of that conversation. We want first to get the conversation that passed between you, whereas I think you are introducing something merely of your own knowledge?—Well, then he asked me if I recollected when they built the new inn there. Q. Where?—At West Tisted. The person’s name was Stevens who built the inn, and he had no right of way to get to his house. Q. We want the conversation?—But this is what he asked me. Q. But you are stating a fact: what did he ask you?—He asked me that. Q. What?—If I recollected when that inn was built.” Then Dr. Kenealy says, “Tell me as far as you can exactly what passed between you. I understand the last thing you said was that he asked you if you recollected when they built the inn at West Tisted, and when there was no right of way to it?—Yes, that is it. Q. Now, go on with the conversation?—Then I told him that Sir Henry stopped the way up. Q. What did he say to that?—I told him he was obliged to come to Sir Henry’s terms, and make a road to get to the turnpike. The LORD CHIEF JUSTICE: To make a road?—Yes. Dr. KENEALY: What did he say to that?—That was the principal of what we talked about at that place. Q. Was anything said about cutting the estate in the middle?—Yes, Sir James did not like that. The LORD CHIEF JUSTICE: We want the conversation?—That was before that. Q. Before what?—Before we talked about Stevens’s inn. Q. We want to have the thing exactly as it took place?—I told you just as we talked about that, and then we got to the inn afterwards. Dr. KENEALY: What was said about cutting the estate in the middle?—Talking about his father, he said he would have it back if he ever came to the estate. Q. There would have been something preceding that. The WITNESS: That I heard myself. Dr. KENEALY: How did the conversation begin about cutting the estate?—I wanted to find out if he knew anything about this estate. Q. Will you tell us what you said to him, and he to you?—I have told you what

passed. *Q.* Not about cutting the estate in the middle; we have not heard that yet?—That is what he mentioned; his father would have it back. *The LORD CHIEF JUSTICE:* Would have what back?—The land that they exchanged, my Lord. *Q.* That is the land at West Tisted?—Yes. *Q.* He said that, did he?—Yes. *Dr. KENEALY:* What did you say to that?—I said that I knew his father said so, because I heard him. *The LORD CHIEF JUSTICE:* *Q.* Can you tell us where it was you heard the father say that?—At Tichborne House. *Q.* When?—Somewhere about the time they were selling it. *Q.* That was before Sir Henry's death?—Oh, yes, my Lord. *Dr. KENEALY:* Was it before Sir Henry came to the estate?—No; Sir Henry was in the estate some time. *Q.* Was anything else said by him to you or you to him?—Yes, he asked when Tichborne Street was sold. *Mr. JUSTICE MELLOR:* In London?—Yes; and I said, I remembered their talking about it. *Dr. KENEALY:* What did he say then?—He asked me if I knew what it fetched? *Q.* What did you say?—I told him that I thought it fetched 18,000*l.* *Q.* What did he say to that?—He said he thought it was 16,000*l.*, and then he said the property was worth more than double that now. *Q.* What next was mentioned?—He said it was sold for the portion of Sir Henry's children."

Now, as to all these things of which the defendant was speaking to this witness, so far as we can make out what was said by the one or the other, from his very confused account of what passed, with reference to the land having been exchanged at West Tisted, and an inn having been built there on some land which had been sold to a man of the name of Stevens, and also as to the sale of the property in Tichborne Street, it is quite clear all those were matters of which Roger could have personally no knowledge. They all took place long before Roger Tichborne first came to England. Therefore, if he knew anything about these things it must have been knowledge acquired from some one else. Sir Henry Joseph, in whose time the land was exchanged and the inn built, died in 1845, and it was only on the occasion of his funeral that Roger was brought to England; and therefore all this conversation, in which the defendant would have appeared to manifest such knowledge relative to the Tichborne property, was conversation relative to something which Roger could not have known.

Then comes a remarkable dialogue about Alresford pond. "I asked him," continues Morley, "about old Alresford pond. I said 'what a pity it was that the family ever sold that piece of water.' *Q.* What did he say to that?—He asked what piece of water I meant. *The LORD CHIEF JUSTICE:* How did you introduce it? what was your question?—I asked him that on purpose to try him. *Q.* What did you ask him?—About Alresford pond. *Q.* How did you put



your question about its belonging to the family? The LORD CHIEF JUSTICE: Give it to us in the very words you put your question?—There are two pieces of water at Alresford, and he did not know which I meant. Q. But how did you put your question? You put it for the purpose of testing him, a very proper thing?—I said, ‘What a pity it is that the Tichborne family sold old Alresford pond.’ The LORD CHIEF JUSTICE: You just now said ‘that piece of water.’ Mr. JUSTICE LUSH: And you said, ‘He asked me which piece of water I meant?’—Yes. Q. Then you could not have said ‘Old Alresford pond.’ You said, ‘What a pity it was the family ever sold that piece of water,’ on which he asked you which piece of water you meant; is that right?—Yes. Q. What did you say to that?—I said I meant old Alresford pond, and then he said, ‘Old Alresford pond, that never belonged to us.’ Dr. KENEALY: What did you say?—When he said, ‘It never belonged to us,’ I said, ‘How is it then that my forefathers were keepers for them for so many years; and I have got a gun left me, as an heir-loom, that they used to use on the estate.’ The LORD CHIEF JUSTICE: You told him this?—Yes, my Lord, and he sat awhile, and afterwards he says, ‘That property was given to us, the family, some number of years ago, as a fishing right, and swan right.’ The LORD CHIEF JUSTICE: That piece of water?—Yes. Q. As a fishery?—As a fishery right and swan right; and after a while he says, ‘That has been sold out of the family more than two hundred years.’ Dr. KENEALY: Now, at the time you put the question to him, did you know that the Tichbornes had not any right in that property?—I knew it then, but I did not know it years before. The LORD CHIEF JUSTICE: You knew what?—That it did belong to the Tichborne family, not the property, only the right. I thought the property itself belonged to them some years before, but I knew it did not belong to them at this time, that is, the fishing and swan right. I also asked him where the rights of the water ended, and he told me from Ovington to Cheriton, to the Springhead. That was perfectly correct.” Now, here again with regard to what had been the ancient right of having a swannery and a fishery in this Alresford water, and what had been the case some generations back, though Roger Tichborne might have known these things, he could not have known them except from what he had heard or read; and though this exhibition of knowledge on the part of the defendant is very striking, it must always be taken with this qualification, that just as Roger may have learned it from some one talking to him, so may the defendant; and at this time he was staying at Alresford, and associating with Baigent, and nothing is more likely than that Baigent, who knew the history of the family, preparing materials as he was for writing a history of it, would know this fact, and would very likely mention it. If he and the defendant happened

to pass the water together nothing would be more likely than that it should be talked about. It is to be observed that the witness had been asked three times to go and see the defendant, and went the last time, and was introduced by Rous. There can be little doubt that the defendant was prepared to talk to the man on some of these particular subjects to convince him of his identity, and introduced them for that purpose. The defendant was at that time intimate with Mr. Hopkins, the family solicitor, who in conversation might communicate a good deal of information to him about one thing and another. Hopkins of course knew all about the exchange of land at West Tisted and the sale of the Tichborne Street property.

However, the witness also says he recognized the defendant by his appearance, but he did not recognize his voice. Then he is asked whether he made an affidavit, and he says he did, and then he is asked whether they read it over to him, and he says they did, and then the affidavit is produced, and the man who told us he could not recognize the voice is made to say in his affidavit, "I saw the plaintiff and did not recognize him, he having grown very stout since I last saw him, but after a few minutes' conversation, during which I watched the movement of his features, I fully recognized him as the Mr. Roger Charles Tichborne I had formerly known, and noticed in the plaintiff's features that same expression of face and movement of the eyes, as I knew and recollected him when a boy, and as he grew up and in after-years, and the longer I talked to him, and the more I looked at him the more I was convinced as to his identity. His eyes and eyebrows, and the general expression of his face and his voice are unmistakable, and I was particularly struck with the strong likeness and resemblance he now bears to his uncle, the late Sir Henry Joseph Tichborne, my old master. I remained in conversation with the plaintiff for some hours, during which he frequently conversed with me about Tichborne and its neighbourhood, and about his family and other matters well known to him." That is the way in which these affidavits are prepared. To us he says, "I did not recognize the voice, I could not trace anything in the voice. I made an affidavit which was read over before I swore it. I never said the voice was unmistakable, nor do I recollect saying anything of the sort." Yet he is made to say that his eyes and eyebrows, and the general expression of his face and his voice are unmistakable. That is the way these affidavits are got up.

The next witness is Elizabeth Stubbs, who is the wife of a farmer at West Tisted, and her son now rents the Home farm at Tichborne. She says Roger used to come shooting on their ground, and took luncheon; that when the defendant was down there in the month of October, 1867, there being a sale at the house of a neighbour, he went to this sale, and afterwards came to her house, by appointment,

to lunch, and when he came in he looked up and saw a picture opposite the door, and made the observation, "That is not the old family picture I last saw, what have you done with that?" She says, "I walked in after him, and said, 'Sir Roger, look round,' and he looked round, and seeing the old picture, said, 'Ah! that is it.'"

Now, this old picture was a remarkable one. It was a picture of the witness's great great grandfather; and, of course, going back so many generations the dress would be distinguishable from the dress of a modern picture. It was never hung opposite the door, she says, but always in the place where it hangs now. The picture opposite the door was of a man of more modern times, viz., her husband's father. Well, she is much struck with the fact that the defendant on coming into the house should at once speak of the old picture, and should observe that the picture opposite the door was not the old one; and then, on being told to look round, should recognize the other as the old family picture. That might have been a striking fact; but she says the picture was very well known; they had had it for years; it had hung there in her father's lifetime. The defendant had in the meanwhile seen her husband before he called on her. Her husband was not called. The husband may have mentioned the picture to him, or, it is possible that some one else may have said, "You are going to Stubbs's to lunch; you will see the old family picture"—a casual observation, made quite innocently, may convey information to the mind of the person to whom it is addressed which may afterwards be adroitly made use of. That may have been the case here, though of course it may have been the genuine recognition of the defendant. We must look at the facts from both points of view. The unthinking part of mankind, upon the exhibition of knowledge of this description, rush at once to the conclusion that it must be genuine. We, who have to exercise a more careful and deliberate judgment, and, in forming that judgment, must take in a far larger range of facts than that on which the opinion of these witnesses was formed, must take care that we are not deceived by knowledge apparently honest, but in reality factitious and delusive. The witness was asked whether Mr. Guilford Onslow, who lives in the neighbourhood, was in the habit of coming to their cottage, and she says, "Oh, yes, very often, and he knew the picture perfectly," as of course he would; and the observation is that Mr. Onslow, who has taken such a deep interest in this matter, and is much interested in it, may have told the defendant of the picture. That is the purpose of the cross-examination. Such a thing is not impossible. You must judge if it is likely. On the subject of identity, this witness, who recollects Roger, is not asked whether she identifies the defendant with the recollection she had of Roger, but Dr. Kenealy steers clear of that, and asks, "Is there anything about this gentleman that reminds you of his relations?—Yes," she says,



“ Sir Henry Tichborne. *Q.* In what does he resemble Sir Henry Tichborne?—His stoutness and shoulders, and that like, and his countenance too.” That is the case, I find, with many of the witnesses; instead of finding a likeness to Roger himself they are struck by a likeness to one or other of the family.

Then comes William Hall, a blacksmith, from whose evidence, I think, you may see that some persons connected with this case have not been over scrupulous in the way in which they have sought to ascertain what a witness would say for the information of the defendant. The witness tells us that when a boy he was out birds'-nesting on one of the hassocks, that is clumps of trees, on Tichborne Downs; and he was found there by Roger Tichborne, who was out with Mansbridge, with a dog and gun. Mansbridge was about to beat this boy for being where he had no business to be, but Roger interposed, and the thing ended by Roger giving him a shilling. He tells us another story about Roger having one day upset a basin of soup, which, when he was a lad, had been given him in the kitchen, and Roger is supposed to have upset it mischievously, and was rebuked by Miss Doughty for doing so. He says he saw the defendant at Alresford out fishing, and he saw him again, but still he would not be convinced that the defendant was Sir Roger until he had an interview with him. He sees Mr. Onslow at Callow's, the saddler, who was a strong partisan of the defendant, and he tells Mr. Onslow he should very much like to see the gentleman and ask him a few questions. So Mr. Onslow produces a piece of paper, and asks the witness the subject of the questions, and takes it down on paper. “ *Q.* Was anything taken from you then?—Yes, just what I wanted to ask him, if he recollected seeing a boy in a certain place in the Tichborne Park. *Q.* That is the question you wanted to ask him?—Yes. *Q.* And that was taken down?—Yes. *Q.* By Mr. Onslow?—Yes. *Q.* What place was that?—Why, a field close by what they call the ‘Crawls.’ The LORD CHIEF JUSTICE: Did you tell Mr. Onslow that?—No. Mr. HAWKINS: Did not he ask you what place it was?—No; he did ask me, but I did not tell him. *Q.* He did ask you?—Yes. *Q.* You could not refuse him; and if you think for a minute you will say you did not?—I asked him to write to the gentleman, and ask him if he recollected that. *Q.* What?—My seeing him at a certain place in Tichborne Park. *Q.* You asked Mr. Onslow to write to the gentleman if he recollected your seeing him?—Seeing a boy. *Q.* In a certain place in Tichborne Park?—Yes. *Q.* Without saying where?—Yes; and giving him money. *Q.* And giving him money?—Yes, and what money it was. *Q.* That is what you told him to write?—Yes. *Q.* What did Mr. Onslow say when you asked him that?—He said he would do it. *Q.* Did he ask you what place it was in Tichborne Park?—Yes. *Q.* Just tell me what he said?

—Well, that is what he did say. *Q.* What?—What place it was. *Q.* And you said?—Nothing; I would not tell him. *Q.* What did you say to him?—That I wanted to see him myself. *Q.* Did he tell you whether he had written or not?—After he had written and got an answer. *Q.* Did he show you the answer?—No. *Q.* Did he read the answer to you?—No. *Q.* He told you he had got an answer?—Yes. *Q.* Not what the answer was?—He told me he recollected such an affair. *Q.* And was that all?—That was all. *Q.* Is that all you told Mr. Onslow to ask him, whether he recollected meeting a boy in Tichborne Park at a certain place and giving him certain money?—Yes.” Then he comes to town, and sees Mr. Onslow again. “I saw Mr. Onslow then, and he told me that Mr. Tichborne had written to him, and recollected about seeing a boy. *Q.* Did he tell you where, or did he keep it a secret?—He told me that he recollected the affair what I spoke about. *Q.* Recollected the affair?—Yes. *Q.* That is all?—Yes; and then he asked me to tell more. *Q.* And you would not?—No; I told him I should like to see the man. *Q.* You keep speaking of that. You say Mr. Onslow asked you to tell him a little more?—No; I cannot repeat the words exactly. *Q.* As near as you can; you have a very good memory?—I told him I should not tell him any more; I should like to see the man. *Q.* What did he say?—I do not know that he did say anything more then. *MR. JUSTICE LUSH:* Is that the time he told you he had got an answer?—Yes. *Q.* He asked you to tell him more?—Yes. *MR. HAWKINS:* You say you said you would not?—I would not. *Q.* How long were you with him then?—I cannot say, I did not stop long. *Q.* Ten minutes or a quarter of an hour?—Ten minutes or a quarter of an hour perhaps.” After this the witness sees the defendant at Lord Rivers’s, and has a conversation with him, Lord Rivers and Mr. Onslow being present, a rustic in the hands of gentlemen very much cleverer than himself. *DR. KENEALY* asks him, “Did you have a conversation there with the defendant?—Yes. *Q.* Was that the first time you had ever talked to him since he came back?—Yes, the first time. *Q.* About how long did the conversation last?—I really do not know. *Q.* About?—I cannot say; perhaps it might have been half an hour, or it might have been a little more. *THE LORD CHIEF JUSTICE:* Did the conversation last half an hour?—No, we were not talking all the time. *Q.* You are asked how long the conversation lasted. *DR. KENEALY:* About how long were you talking to him?—Well, I cannot say, I am sure. He went out once. I think some one came to the door and wanted to see him, and he came back again. *Q.* Then you cannot tell us how long the conversation lasted?—Not exactly, I cannot; I should say I was there about half an hour. *Q.* Did you then recognize him?—Yes, from what he told me, and showed me in the presence

of Lord Rivers. *Q.* What did he show you?—I would not go to see him alone. *Q.* I am asking you what he showed you?—The place where I had seen him in Tichborne Park once. **THE LORD CHIEF JUSTICE:** How do you mean he showed you that?—Drawing the roads on a piece of paper. *Q.* To point out where you and he met in Tichborne Park? Is that it?—Yes. **DR. KENEALY:** Did you recognize him by anything else, but his showing you that?—From his features and voice I fancied he was the man; I went to see him to satisfy myself he was more so.” This conversation was not further asked about, and we do not know more what actually passed. What, he says, is nothing more than the fact of roads being shown him on a piece of paper, and nothing is more easy than for any one who knows that part to draw the roads on a piece of paper; but whether the defendant knew anything about the particular incident we are left wholly in the dark. If that man’s statement is to be believed, it is plain that Mr. Guilford Onslow tried to get from him a good deal more than the mere general question he proposed to put to the defendant. But what were the contents and the particulars of it, whether to satisfy himself, or for any other purpose, I am sure I do not know.

Then comes Mr. Henry Powell, the music master, who says, that during two months in 1849 he gave Roger Tichborne eight to twelve lessons on the French horn, and he speaks of his habit of standing with the weight of his body on his left leg, and bending the right in, or *vice versâ*. Now, his evidence as to the identity is not very cogent, although he expresses his belief that the defendant is Roger; but they had a meeting which gives rise to evidence of more importance. The witness was formerly an inhabitant of Alresford, but has now changed his residence to Winchester; but he is in the habit of going to Alresford to give lessons; and of putting up at the ‘Swan,’ and, he says that on one occasion as he drove into the Swan Yard, the defendant came out either from the ‘Swan,’ or one of the buildings adjoining it, and had a conversation with him. This was in August, 1868. And the conversation was as follows:—“As soon as I drove into the yard and got out of my trap, the Claimant came up to me at that time, and said, ‘Hollo, this is Powell, is not it?’—I said, ‘Yes, sir, it is,’ and he says, ‘How are you?’—I says, ‘I am very well, thank you, but you have the advantage of me.’ He says, ‘Don’t you know me?’—I says, ‘No,’ but after looking at him a second or so, I said, ‘Unless it is Sir Roger Tichborne.’ He says, ‘Yes, it is.’ I said, ‘Well, sir, I should not have known you, you have got so immensely stout,’ and he said, ‘Well, I have increased fourteen pounds since Christmas; but you have got stouter too, and you have cultivated a moustache since I saw you last.’” And the witness says, “That was so. I did not wear a moustache when I



knew Roger, because it was not the fashion then. I said to him, ‘Do you ever practise now, sir?’” and then the defendant told him of the accident in Australia when the horse kicked him and knocked out his front teeth, and injured his nose. No doubt this recognition of Mr. Powell is a remarkable circumstance, unless the defendant had been told that this was Powell, the music master. Mr. Powell says he did not know where the defendant came out from when he came up to him after he got out of the trap. The ostler was in the yard. Whether he was told this was Powell or not we have no means of judging. Of course Mr. Powell, having been an old inhabitant of Alresford, would be known there, and being always in the habit of putting up at the ‘Swan,’ he would be known as he was coming into the yard, and some one would very likely make the observation, “Oh! here comes Powell, the music master.” Or the defendant who had been so often staying at Alresford may have had Powell pointed out to him on some previous occasion. The witness states his belief in the identity of the defendant as Roger, and he says, “I recognized, after looking at him awhile, his features—especially his forehead.” With regard to his hair, he says, “the defendant’s hair may perhaps be a little lighter than Roger’s was, but it is brushed back in the same style—a little lighter, a shade lighter,” is his expression. Then he is asked by Dr. Kenealy as to his style of walk, and he says, as near as he can recollect the style is the same. On cross-examination he is asked about the voice. “The defendant’s voice was not a bit like Roger’s?—I cannot say that. Q. Eh?—I cannot say it was not like it; all the difference I could detect was he used to have a French accent at the time I used to teach him; the defendant’s voice might perhaps be a little coarser. Q. The defendant had no French accent when you spoke to him at the ‘Swan?’—No French accent, but the voice. Q. I recognize your distinction. You say the voice of the defendant was a little coarser than Roger’s?—I fancied so. Q. Was the defendant’s what you would call husky in your judgment?—I suppose that would be the proper term. Q. Now as regards the accent, that was very strong in Roger in 1849?—It was what you may call broken English. Q. There was nothing of that kind about the defendant?—Certainly not. Q. You do not recognize him by that in any way?—No. Q. In your judgment was the defendant an inch or an inch-and-a-half taller than Roger?—I should fancy he would be an inch taller. Q. Now about the hair just for a moment: You say it is a shade lighter?—It may be. Q. Did you recognize that when you saw him at the ‘Swan?’—No, I did not take as much notice as I have since. Q. Even now looking at the defendant, his hair is a shade lighter than Roger’s was?—It seems to me so; as far as my belief goes.” As to Powell, I do not think his evidence of recognition from appearance, or anything of that sort, goes for very much; but the fact of the defendant knowing him at once, unless

you can explain it by his having been told it was Powell who had formerly given lessons to Roger, is a very strong circumstance.

The next witness is William Mansbridge, who was formerly under-keeper, and used to go out shooting with Roger Tichborne. He hears of the defendant's arrival and goes to meet him. He says, "I knew him to be Sir Roger Tichborne." Then, as to his recollection of Roger, what he says is, "he was a very thin, tall young gentleman, and had light brown hair, the colour of my own." He is clearly wrong as to Roger having had light brown hair. He remembers nothing whatever about his walk. A conversation took place between the defendant and him, and he says, "The defendant asked me if I recollected what he and I had ever been doing together. Q. What did you say?—I said I could. Q. Did he ask you anything else?—Yes. Q. What was that?—He asked me if I could recollect the time I held his music book when he used to play the French horn on Lynch Hill. Q. Did you use to hold his music book for him while he was playing it?—Yes. Q. On that hill?—Yes. Q. Did he ask you any other question that you remember?—Yes, he asked me if I could recollect his dog that he used to have. Q. What did you say to that?—I said I could. I recollected it very well. He asked me what the dog's name was. I told him I could tell him. He said he would tell it me himself. Q. Go on, tell us!—'Piecrust,' and 'Spring,' and 'Bess;' but he could not recollect 'Piecrust.'" Then he says that the gentleman who was present suggested that the witness should give two wrong names and one right one. He does so, "Piecrust" being one of the names, and when the three names are mentioned to the defendant, and "Piecrust" is come to, he says, "That is the name." Then the defendant asks the witness where the target used to be put, and the witness says, "I told him I could recollect where it was very well, and he said, 'I will tell you, "Lower Dean."' Dr. KENEALY: Did he mention the name of the person who had 'Lower Dean' at that time?—Yes. Q. What name?—Godwin." It is to be remarked that in almost all the instances given of questions put the topics are suggested by the defendant himself. It is not that the witness asks a question, but the defendant asks questions of the witness, "Do you remember so-and-so?" and then, when the witness is about to tell him he says, "I can tell you," and is the first to mention it. It looks as if he had selected the questions, and had selected them because he was prepared to answer them. Then comes another remarkable thing, that he could not remember the name of "Piecrust." It strikes one as strange that Roger, who had these dogs so many years, should have forgotten the name of one, the name of which he must have become familiar with from the long time of his having the dog, and the name being so singular a name for a dog; but if he had become acquainted with it from hearing the name elsewhere one

can understand his forgetting it, and immediately it is mentioned, clapping his hand on it as it were, and saying, "That is the name." It strikes me as remarkable that Roger, who had that dog for so many years, should have forgotten its name.

The next witness, Edward Pink, might have been very well left behind. He never saw Roger but twice, once on the occasion of planting some trees, and once when Roger was out shooting, and this man was employed to beat for him, on which occasion Roger gave him a pipeful of tobacco, and then he says he recollects him, and that the defendant is the man.

Then we have Mrs. Mary Ann Byles, who lived at Cheriton a great many years, her father being tax-collector. She saw the defendant at Southampton in June, 1872, at a meeting, and recognized him. She says, "Directly I saw him come on the platform I recognized him." That would lead us to suppose that she recognized him by the resemblance to Roger Tichborne. But that is not so. She says, "He is very much like his uncle, Sir Henry Joseph Tichborne, all but the hair and the eyes. Sir Henry Joseph and Mr. Robert, and most of them, with the exception of Mr. James, had light hair and the rest were dark." So, you see, she compared him not with Roger himself, but with his uncle. She says she never spoke to Roger in her life, but she speaks as being without the slightest doubt the defendant is the man. "Q. How long did it take you to recognize him?—Not very many minutes. Q. You never had any doubt, had you?—Not the slightest; he is exactly like what he was when he was about twenty-one, only he is much stouter. Otherwise he is the very image, shoulders and everything. Q. Did you notice the colour of his hair?—Dark brown, rather a dark brown—not quite so dark as it is now. Q. When you recollect Roger's hair it was not so dark as it is now?—I do not think it was quite so dark—not very much difference." Then there is a good deal of cross-examination about the hair which I do not think it is worth while to follow.

John Giles is the next witness. He was a carter to a Mr. Gilbert, of Southampton, and used to take oatmeal to the Tichborne kennels, and occasionally saw Roger walking or riding. Once going along the road he met Roger, and this carter had a dog with him which got ranging in a clover field, and they had some words about it. This was from twenty to thirty years ago, and this man sees the defendant at the Southampton meeting and recognizes him at once, not because he recognized him as Roger, but because he had a Tichborne face. "Q. The moment you saw him you recognized him?—When I could see him to look at him I could recognize him as a Tichborne face. Q. As a Tichborne face?—Yes, I could, and I recognized the gentleman directly, when I could see his face I



could see it was the same face as the gentleman that used to be there when I took up the oatmeal, and that gave me half-a-crown several times. The LORD CHIEF JUSTICE: Was that Mr. Roger that gave you the half-crown?—Not this Mr. Roger, but the old gentleman; when I unloaded, he gave it me. Q. Which old gentleman was it?—I do not know whether it was his father or uncle. Q. Was it Sir Edward?—I do not know. They only used to say, ‘Carter, here is master; you will get half-a-crown this morning,’ and I was very thankful too. Q. I will take it the old gentleman used to give you half-a-crown, whoever was master at that time?—Yes.” So that he only identifies the defendant by his likeness to the uncle or father. I do not think this evidence very material.

Charlotte Grant was in service at Tichborne from 1846 to 1852, first as third housemaid, after which she waited on Miss Doughty and Miss Braine in the schoolroom till the end of 1849, and then she became kitchen-maid till 1852. She speaks of having seen Miss Braine correcting errors in Roger Tichborne’s letters. After she left the service she went to her father’s at Poole, and while there she once saw Roger at Upton in a little boat or skiff, and also saw him walking in the street. She saw the defendant the day before she was examined, and she is asked, “Did you ask him any questions?—I asked him one question which he answered. Q. What was the first question you asked him?—The first question I asked him was respecting a likeness that was to have been taken of a young lady to be taken abroad. The LORD CHIEF JUSTICE: Will you just tell us exactly the terms in which you put the question to him?—About Miss Doughty. Dr. KENEALY: You say the question had reference to that: Give us the terms in which you put the question?—I asked him if he recollected a likeness that was being prepared at Poole to take abroad with him. The LORD CHIEF JUSTICE: The likeness of Miss Doughty that was being prepared at Poole to take abroad with him?—Yes. He answered me, ‘I did not obtain it; I did not have it.’ Q. Did he use both expressions, ‘I did not obtain it,’ ‘I did not have it,’ or one of them?—Both; then I asked him if he had the sketches that were to have been taken for him to take abroad, of Upton. He said, ‘I did not have it; it was not prepared.’” She says the reason they were not prepared was on account of the ill-health of the photographer. She admits that all she knew about that was what she heard her father say. He was a ship’s carpenter, and had nothing to do with those likenesses. In her cross-examination she is asked as to the appearance of Roger, and she says, “He was a tall gentleman; not narrow-chested. Q. Why did you say that; I did not ask you?—Because he was not a narrow-chested man. Q. That is a very good reason; have you heard others say that he was?—I have not.” Then I say, “Why did you volunteer it? Dr. KENEALY: She was asked to describe him.”

Then she says "he was a slim gentleman. Q. Would you have been able to swear he was, in your opinion, Roger, if you had not put those questions to him." To which she answers, "Yes, by his forehead and eye-brows." In cross-examination, she sticks to what she had said about the correction of his letters by Miss Braine. "I have seen her doing it more than once, more than half-a-dozen times: she looked over his letters, and what she had seen wrong she corrected.

Q. Did she correct it herself with her own hand and pen?—Yes.

Q. Will you give me any instance of anything she said or Roger said while she was correcting?—I cannot do that. Q. How do you know she was correcting his errors, as you call them?—Because she has spoken to him; you will understand I did not pay attention to what they were talking about. The LORD CHIEF JUSTICE: If you did not hear, how can you tell from what she said that it was a letter?

—She named it to him. Q. Named what?—The letter. Mr. SERJT.

PARRY: How do you mean, named his letter to him? do you know or remember anything she ever said to him about correcting a letter?

—I remember her saying, 'This is wrong, and that is wrong,' and have seen her take the pen, that is all I can say. Q. You have seen

her take the pen and make an alteration; that, you say, was more than half-a-dozen times?—More than half-a-dozen times. Q. Do you know during what period that was? You say more than half-a-

dozen times, in a week, or month, or what?—I am not prepared to say how many times in a week; to my knowledge it has been done

more than half-a-dozen times during my time waiting on Miss Doughty. Mr. JUSTICE LUSH: How long did you wait on her?—

More than twelve months I was with Miss Doughty and her governess. Q. How came you to be in the room at all to notice

this?—When I have gone to take anything to Miss Braine; I used to take her luncheon to the schoolroom. Q. Where was Miss

Doughty all this time?—Sometimes in the drawing-room, sometimes in her own room. Q. Did she not lunch with Miss Braine?—Not

at all times. Q. Do you mean to say that the time when you noticed this correction of errors was when you took the lunch into Miss

Braine?—Yes. Q. And the six times or more you speak of, you

were taking the lunch in to Miss Braine, when you heard what you have told us?—Yes. The LORD CHIEF JUSTICE: On each occasion?

—Yes. Mr. JUSTICE MELLOR: Was Roger sitting by her or standing up while she did this?—Standing up. Q. On every

occasion?—On every occasion: I never saw him sit down in the schoolroom. Mr. SERJT. PARRY: He was standing up on the

occasions you have told us?—Yes. Q. On each occasion, did you hear, 'this is wrong,' and 'that is wrong'?—Yes. Q. She said

nothing more?—Nothing more. Q. You did not know what was wrong?—I did not myself. Q. What did she say, 'This is wrong'?

—She merely said, ‘This is wrong,’ and ‘that is wrong, Roger.’  
*Q.* You are sure she called him Roger?—Yes. *Q.* ‘This is wrong, that is wrong, Roger,’ then took her pen, and made the alterations?—Yes. *Q.* Do you mean to pledge your oath you saw her make the alterations?—Yes. *Q.* Saw her write?—Yes. *Q.* You cannot tell us what you saw her do?—I do not know what she done. *Mr. JUSTICE MELLOR:* She was not teaching him to write?—She was correcting the errors he had made in his letters.” This witness is flatly contradicted by Miss Braine, who says she never did any thing of the kind, on any single occasion; nor is it likely to have been the case, as Miss Braine had never known Roger Tichborne before his short visit the winter she was at Tichborne. It is impossible to believe this witness.

Then we have a witness of the name of Thomas Parker, who knew Roger Tichborne, and met him in the hunting-field, and who says Roger came to his house several times. He says he sold him a horse for 50*l.*, for which a cheque was sent him by Mr. Gosford. He saw the defendant at Alresford. He noticed he was very like his uncle, Sir Henry, which seems to be the point on which most of them go. Sir Henry walked a little lame at the knee, he says. The defendant spoke to him of the horse he bought of him, and remembered having ridden his uncle’s pony by the side of the horse, to see how the horse went. He said it was the little bay pony ‘Louisa.’ He named the coverts we were riding in that day. They were the coverts at Cherington. He asked if I remembered his uncle Robert living at Chilton, and said his uncle went to live at Bishop’s Sutton. On cross-examination, the witness admits that he had heard that the defendant was come down before he saw him at Alresford. Then comes the question whether the witness had not let out when in the neighbourhood the circumstance of the purchase of this horse, so that it might have reached the defendant’s ears. He knew he had come down before he saw him at Alresford, and he is asked, “You had heard it talked of?—I had not been to Alresford for some time before when I saw him. *Q.* Did not you say more than once you should know him again because he bought a brown horse of you?—I might have said so. *Q.* Was it not well known in the neighbourhood, and amongst your friends, and those interested in the matter, that you could identify him, or would be likely to identify him, because you had had a transaction of business with him, that he had bought a brown horse of you?—That would not have caused me to have known him, that I recollected the deal. *Q.* But did you mention the fact that you had had that transaction with him?—I might have named it, but still I knew him from his personal appearance.” Then he says, “I did not know the name of the pony. I did not know it till the defendant named it himself;” that is, that the name of the pony



was 'Louisa.' " *Q.* What was it that the defendant said to you about the horse? Tell me how the conversation began. You say he came into the yard. Who spoke first?—Well, perhaps I might have named the horse first." Just before he had put it the other way. Then I interpose and say, "We want to get, as near as your recollection will serve you, the conversation exactly as it took place—Who spoke first, and then what was said?—Well, he came down the yard, and I said, 'How do you do, Sir Roger?' Then he shook hands with me, and I began talking with him, and then the horse was named, and he recollected directly. *Q.* But who named the horse?—Well, I think I did. I am not certain, but I think so. *MR. SERJT. PARRY:* Did you say this to him, or something like it: 'Do you remember my selling you a brown horse, Sir Roger'?—I do not remember the words that passed. *Q.* What were the words you used?—I do not remember." Then I say, "The horse was named: give us some little information; so much depends on how the conversation took place: do try and recollect?—I believe, to the best of my remembrance, I asked him if he recollected buying the horse. *Q.* Buying what horse?—The brown horse I sold him. *Q.* Did you use the term 'brown horse'?—Yes, my Lord; no, my Lord; I did not; not when I spoke about selling him the horse." Then he adds that the person who had charge of the pony was a man named Lillywhite. Lillywhite, we know, had been in the presence of the defendant. Whether he had mentioned this pony we do not know. But nothing is more likely than that the man who had had charge of the pony Roger used to ride as a lad, would begin to talk about her. Everything too in estimating the value of evidence of this kind depends on getting the form of the question and answer exactly as it was given; and it is very difficult to get from these witnesses how that was; it naturally makes all the difference.

The next witness is Thomas Muston, an important witness, who was in the service of Sir Edward Doughty from 1841 or 1842, from the time he was eleven or twelve years old, after which he became stable-boy or groom. He was transferred to Roger Tichborne as soon as the latter left Stonyhurst, and was with him in Ireland, and took his horses and dogs to Dublin. From Dublin he went with him to Cahir. In March, 1851, he left, and went into the service of Sir Piers Mostyn. This witness says that he saw the defendant at the Waterloo Hotel, Mr. Spofforth being present, and stayed one or two hours with him. He asked the defendant whether he could describe his horses. He says he described their colour; he spoke of a bay, which he bought in Hampshire. "I said I think you did not buy that horse yourself; Sir Edward Doughty made you a present of it. Upon that the defendant said, 'You are perfectly wrong; I paid for it myself, out of my own pocket.' He also said 'he bought a horse in Stamford

Street, of Cox, and another bay horse in Kent, but he could not recollect exactly of whom, at Maidstone Barracks." Much of this was perfectly correct. Roger Tichborne did buy a horse of Cox; he did buy a horse at Maidstone, of an officer there. That we know from his letters; but when the defendant says, with regard to the horse bought in Hampshire, that he had paid for it out of his own pocket, I think that must be wrong, because Parker says he was paid not by the young man himself, but by a cheque from Mr. Gosford, who managed, as we know, everything for Sir Edward Doughty; and, therefore, it seems much more probable that Muston was right, that it was a present of a horse, given to Roger by Sir Edward Doughty, than that Roger paid for it out of his own money at the price of 50*l*. Muston was present, he says, when the horse was bought, at all events when it was tried; and he says the horse was a present from Sir Edward. Dr. Kenealy asked him why he said so, and he answers, "I understood at the time Sir Edward had made him a present of it." He was likely to know, as these things get talked about among the servants. He says he afterwards asked the defendant if he remembered having any dogs, and asked him to describe their colour. And he described them. He spoke of one white dog that he had in Hampshire, and told him his name—'Piecrust;' and of another which he said he bought in London. He described the dog; he said it was a big deerhound, a half-bred deerhound. That was the dog 'Spring' we have heard so much about—"Q. That was right?—Yes. Q. Did he tell you the name of that?—Yes. Q. Well, what?—He said its name was 'Spring.'" Now, what follows is very remarkable; it is one of the most remarkable parts of the whole of the evidence for the defence. "Q. Did he tell you where he bought him?—I asked him if he recollected where the dog was bought, and he did not recollect at first; he said he knew it was somewhere near a mews in Mount Street, and then, shortly afterwards, he said, 'I recollect, when we went to buy the dog, you took me through a shop into a yard at the back of the shop.' Mr. JUSTICE LUSH: That you did?—Yes. Q. He said to you, 'when we went to buy the dog, you took me?—Yes. Q. Where?—Through a shop into a back yard behind the shop; and that was correct. Dr. KENEALY: Did you ask him how much he had given for the dog?—Yes; and he said he thought about 4*l*. or 4*l*. 10*s*. Q. And that was correct?—Yes. The LORD CHIEF JUSTICE: Which?—4*l*. 10*s*., my Lord. Dr. KENEALY: Could you tell me in what year that was?—It was in 1849. Q. Did you ask him any other questions?—I do not recollect now. Q. Was anything said about ages?—Yes. Q. What was said about ages?—He asked me how old I was, and I said I was forty-three or forty-four, I was not quite sure; and I think—I will not be quite certain—he told me that I was the same age as him all but a month. His birthday was in

January and mine in February." The witness's birthday, he says, is on the 22nd of February. "Q. Had you ever told your exact age to Carter or McCann?—No. Q. Or had you told either of them where those horses or this dog was bought?—No; not that I am aware of; I think I am certain that they would not know where the horses and dogs were bought. The LORD CHIEF JUSTICE: The question was whether you had ever told them?—No, my Lord, I have never told them. Q. Never mentioned to them anything about the purchase of the horses?—No. Dr. KENEALY: Or the yard behind the shop?—No. Q. That was the first interview you had with him: did you fully or partly recognize him at that interview?—I partly recognized him, but I did not like to say it was him. I could not be quite confident; I did not feel exactly confident; still I think that no stranger could tell me all that he told me. Q. I suppose a good deal passed that you do not remember now?—Yes." He further says, "I asked if he remembered the quarters of Colonel Hay. I think he described the quarters of that wing very minutely. He said Colonel Hay lived on the far side of the wing, and he himself on the other side."

Then the witness is asked about the twitch, and he says he remembers that Roger always twitched his eye-brows. He goes on to say, "I asked him another question. I asked him about the coat he dined in with the Carabineers the first time he dined with them, and he answered, it was 'A frock coat.' I asked him if he recollected a slit under the arm. He said he did not. I asked him what sort of boots he wore hunting, and he answered, 'Napoleons;' and what sort of breeches, and he said, 'White leather.' Then he asked me if I recollected practical jokes, treading in candles on the floor, and I answered, 'Yes, I recollected it very well,' and he said it used to be done, and Lieutenant Foster used to be the leader." Here again it is remarkable that the defendant should remember that when he went to dine at the Carabineer mess for the first time he went in a frock coat. Then the witness describes Roger Tichborne, and says he was very broad-shouldered, and was very full in the chest, although his clothes had to be padded to make him appear a good shape. He says his hands and feet were very small; that he had a curious walk, rather limping, and that the defendant's walk is exactly the same. He has no recollection of his face. Then he tells what is certainly an untruth—an untruth, however, which people of his class are very apt to tell. He says he was not dismissed from Roger Tichborne's service, but gave notice in consequence of some words about his getting drunk, and so he discharged himself. Now, we know from Roger's letters, written to Lady Doughty at that time, that he had frequent occasion of complaint against this man Muston, and ended, though reluctantly, by discharging him. He



expressly gives Lady Doughty to understand that he had discharged Muston for bad habits, and not that Muston had voluntarily left him.

The witness gives an account of practical jokes which these young officers used to play on one another, and on Roger particularly. Amongst others he tells us of their putting his shirts into the coal-box. He admits that he never mentioned these things at the last trial, but then he gives a reason which may be satisfactory; he says he was not asked about them. On the photograph being shown to him, he says it is not a good likeness. He had said upon the former trial that it was "a very good likeness," "a very fair likeness," and "that any one would know him from it." He admits that. He admitted that he did say at one time he did not believe the defendant was Roger Tichborne. He says he had seen a Father Guy many times before he was examined, he being a Roman Catholic. The suggestion implied in the inquiry is that the conversation with Father Guy had influenced him in giving his evidence. He says, "I never told anything about the horses. I will not swear I did not. I did say I thought they would not be able to recognize him, I heard he was so much altered. I will not swear that nothing was said about the horses. I cannot swear that at the last trial I did say the horses were not mentioned. I saw Mr. Spofforth before I went into the room to the defendant. I had to wait an hour before I saw him." He was questioned with reference to what he had said at the former trial as to whether he had not said that the defendant introduced the subject of the horses, and his answer leaves the matter in considerable doubt. Part of the statement of this witness is certainly very deserving of attention, and one does not readily see the solution of it except on the hypothesis of its being the genuine recollection of the real Roger. It is not so much the colour of a horse, or where he bought a horse. I think in all probability his servant or groom would know that very well. Carter may often have heard where this or that horse was bought, when Roger was talking to the other officers about his chargers. But this purchase of the dog 'Spring' is very striking in this way. If we can trust to Muston's statement the defendant actually knew the precise place, or described the precise place where the dog was bought. I do not think much about the price, because I think that in all probability Roger's papers were not destroyed, and are in existence somewhere to this hour, and if he bought a dog for 4*l.* 10*s.* he would be very likely to take a receipt for the price; but the describing the locality is certainly a remarkable fact, unless you suppose Roger to have made an entry of the thing in his diary, and that so it came to the knowledge of the defendant. All of which, of course, is merely matter of supposition or speculation. I cannot tell how it may be, but it certainly is a very striking fact, and strongly in favour of the defendant, that he should

have recollected that particular locality, and be able to describe it exactly. A good deal would depend on whether the witness first put the question as to the dogs to the defendant, or whether the defendant first introduced it. With reference to what the witness had said at the last trial as to the dogs, Mr. Hawkins says, "Now, I ask you this upon your oath if in answer to this question, 'what about the dogs?' you did not at the last trial say, 'He asked me if I remembered the dogs?'—I cannot remember. Q. Will you swear you did not say that?—I will not swear I did not. Q. I ask you upon your oath if you did not? be careful." And the question being put again, he says, "I cannot recollect whether I did or not." Then my Brother Lush says, "Cannot recollect what?—The words I said at the last trial." Then I point out the difference to him between his introducing the subject himself by questions put to the defendant, and the defendant spontaneously introducing the matter, and he says, "I cannot quite understand. Q. Recollect the distinction between representing yourself as having introduced it in the first instance?" And he says, "Yes, my Lord, I introduced the subject of the dogs, I believe. I am certain of it." And Mr. Hawkins says, "I will put this to you again, and I ask you upon your oath, was not this question put to you, 'what about the dogs?' and if in answer to that question you did not say, 'He asked me if I remembered the dogs?'—I do not remember that. Q. Will you swear you did not say it?—No." Then, Mr. Hawkins continues to read from the former examination of the witness, "'Was anything said about their names?—He asked me, at least I asked him, if he recollected their names. Q. What did he say?—"Spring" and "Piecrust." Q. Did he say anything about the purchase of any dog in London?—Yes. Q. What did he say about that?—He asked me if I recollected his purchasing the dog. Q. Did he name anywhere?—Yes. Q. Where?—In a yard in Mount Street, through a shop into a yard we went and purchased it. Q. Did he tell you what sort of a dog it was?—Yes. Q. What sort of a dog was it?—A half-bred deerhound. Q. He told you so?—Yes. Q. And is that the fact?—Yes. Q. Did you describe the yard to him, or he describe the yard to you?—He described it to me.'" Having read this, Mr. Hawkins puts the question, "Now, do you mean to say that he did not introduce the subject of the dogs?—Well, he might have done, but I do not think so; I feel quite positive that I introduced the subject." It is certain that at the former trial the witness had represented the defendant as introducing the subject of the dogs and the place where they were bought, whereas before us he put it the reverse way. It obviously makes all the difference. Because if the defendant introduced the subject spontaneously, it may have been done because having acquired knowledge with reference to where the dogs were bought, he was desirous of showing it. Then the witness is asked,

“These two dogs were two dogs that were left, were not they, at Cahir with McCann?—Yes. Q. Will you swear that you did not tell McCann that he gave 4*l.* 10*s.* for the dog?—I will not swear that I did not, and I do not know that I did.” The question is material, because if he told that to McCann, one can see a ready way in which it might come to the knowledge of the defendant. If this man, Muston, when with the regiment, had ever told McCann or Carter of this purchase of the dog, and the price given for it, and the place at which it was bought, we should have the whole thing accounted for; but we have no evidence showing that such was the fact.

The next person is a man of the name of Bailey, an innkeeper at Ropley, who says he knew Roger from his boyhood, and has seen him out with the hounds. He once called at his house in a dog-cart. The witness had been groom to Mr. Robert Tichborne when Roger was a boy; and when Roger was about four or five years old he used to put him on his uncle’s horse, “Cock Robin,” about which there was a good deal of cross-examination of the defendant on the former trial. He says, “I think Mr. Robert took the horse with him to Bath.” He saw him out with the Hampshire hounds, and on one occasion he came out in large brass stirrups, and he was laughed at; and the witness says he got him to change his stirrups. He says he “has not the slightest doubt the defendant is the man he knew in this way as a boy.” That I think is the extent of his evidence.

Then there is a witness, gentlemen—I do not know whether I ought to take up your time with him, but I cannot pass him over without notice—and that is Charles Lewis, the draper’s assistant at Alresford, who, you recollect, told us that when Roger was staying at Tichborne before he went into the army, he made his acquaintance, and they became exceedingly intimate, the intimacy being, however, unknown to Sir Edward and Lady Doughty; that Roger used to come out at night, and that these two young fellows used to go about together pursuing immoral practices, leading a very low sort of life, going to public-houses and pot-houses drinking, and getting the clergyman’s maid-servants, or other loose women, to come out and meet them at night. He states that on one occasion they were out together late on Tichborne Down, and there was a question about going to some public-house, and they had a dispute about it; and Roger struck him over the head; and thereupon the witness, having a stick in his hand with a piece of iron at the end of it, made a thrust at Roger and wounded him on the left arm, about the place, as he described it, where the defendant has the mark; and he says it bled very freely; the pointed iron having penetrated through the cloth and into the flesh; and finding this was the case, he, the witness, started off to Alresford to the chemist’s and got some diachylon plaister, while Roger waited on Tichborne Down for



his return; and he says that when he came back, having his scissors in his pocket, he cut the diachylon plaister, put it over the wound, and bound up the arm, and then tied it round with his handkerchief. So that, if this evidence is believed, the mark on the arm may be accounted for in that way. I asked him on what part of the arm it was, and he said, "On the left arm, about here," touching the outside of the left fore-arm. Now the mark on the defendant's arm being on the inside, this answer was unfortunate; so Dr. Kenealy ventures on a singularly leading question: "Are you quite sure it was on this part of the arm: just try and remember." On which the witness, who saw he had made a mistake, amended his answer, and, pointing both to the inside and the outside of the arm, says, "It was either here or here." I observed it would make all the difference. "That is so," says Dr. Kenealy; "I want to know which side are you sure it was?" Then I say, "Your question plainly indicated to him that he was wrong. Mr. JUSTICE LUSH: It was a very leading question indeed. Dr. KENEALY: If wrong, was I to leave him wrong, my Lord? I am following what is in my brief. Mr. HAWKINS: I object to that statement, that he was wrong. Dr. KENEALY: I ought not to have said it." Then my Brother Lush says, "It was a very suggestive question. The LORD CHIEF JUSTICE: I asked him where, and he pointed it out, and then your question indicates that he is wrong, and then he says it was either outside or in." Afterwards the witness says, "To the best of my belief it was here. Q. On the outside?—On the outside. It is so many years ago I would not swear whether it was outside or in." Then my Brother Mellor says, "You have not told us what year, or in what time of the year, this was?—It was in 1848; in the spring. The LORD CHIEF JUSTICE: What time in the spring?—I could not swear to the date, my Lord. Q. You could tell us whether early spring or late spring, March, April, or May?—The reason that I am positive that it was in 1848 is because I broke my arm in August, and it was before that. Q. Was there anything to fix it in the spring? How long was it before you broke your arm?—I should think about three or four months, three months. Dr. KENEALY: Do you know whether that thrust left any scar or mark upon the arm?—That I would not swear. Q. Have you ever seen the defendant's left arm?—No. Q. Did you see his left arm at the time you were plastering and bandaging it?—Yes. Mr. JUSTICE MELLOR: What time of the evening was this?—Between ten and eleven at night." The witness was examined as to this, of course, to prove that this is the cause of the scar on the defendant's arm. Now, a wound from a sword-stick, or a stick with a pointed piece of iron at the end of it, sufficient to produce blood, and to leave a scar on the arm, would be a serious one; and that Roger, instead of going home after this accident, or instead of going to a surgeon's with the witness, should

remain standing or sitting on the Down, while this man goes away to a distance of two or three miles to fetch some diachylon plaister, which he puts on the wound, and that with that there is an end of the whole matter seems a strange story; because if anything happened such as this man describes, you would expect it to produce more serious consequences than could be got rid of by the mere application of a piece of diachylon plaister. It is a strange story, but what is still more fatal to the story is, that the witness gives a date and fixes the time by a circumstance, and the time will by no means suit. It was, he says, in the spring, early or late spring, of 1848; and he fixes it, he says, by the fact of breaking his arm in that year, and it was three or four months before he met with that accident. It is impossible the thing could have happened at the time he fixes, because Roger was undoubtedly then at Stonyhurst. The Stonyhurst vacation was in August, and there was no vacation in the spring at which the philosophers came home; and therefore Roger could not have been there at the time that this man says. The story itself is a very strange one, and is told by a strange witness, who spoke of their proceedings in a reckless way, as if he took pleasure and delight in the narration of his own improper and loose habits. You will not forget the observation he said he made when he once saw Roger and Miss Doughty sitting on the Lovers' Seat. He said he felt very indignant because he thought Roger had "got hold of one of his girls." He rejoiced in a multiplicity of such companions, "one of his girls." I do not think that witness is one on whom very much reliance can be placed. Having had an interview with the defendant, he is asked if he put any questions to him, and his account is a strange one. "Did you put any questions to him?—Yes. *Q.* As well as you remember, tell us what were the questions you put to him, and the answers he made?" He says, "I asked him if he remembered the last time I saw him, or spoke to him—where it was, if he was standing, sitting, or riding; who he was with, and if he could tell me what he did. He considered for a few minutes, and said, 'The last time that I saw you, I was riding with my cousin Kate. I saw you in front of Brand's the keeper's. I struck you with the whip, and wished you good-bye. That is the last time that ever I saw you.' That is positively contradicted by Lady Radcliffe. You must judge between them. He tells another very strange story. He says Roger and he went to a public-house kept by a man he calls "Old Chick"; and he took upon himself to say how many glasses of grog they had on that particular occasion, and what they had to pay for it. He says he questioned the defendant on this subject, and the defendant recollected the circumstances. "*Q.* Now, tell us another question you put to him?—I asked him where we went on the last occasion that ever I saw him. He replied, 'To the Tichborne Down public-house.' I asked him what we had

on that evening to drink; if we were smoking, or what we did. He immediately said what we had, and, further than that, he told me the amount. *Q.* What did he say you had?—He said we had so many glasses of grog. *Q.* How many?—Six glasses of grog. *Mr. JUSTICE MELLOR:* Did you say ‘he,’ or ‘we’?—We. *Q.* What else?—A cigar and some tobacco.” He says “the defendant added, ‘I have never paid you for it from that day to this; it was my turn to stand treat.’” *Dr. KENEALY:* Was the whole of that answer correct?—It was. *Q.* Was anybody else in your company at that time?—No. *Q.* None but yourself?—No. *The LORD CHIEF JUSTICE:* You remembered the six glasses, did you?—Yes.” Further on he states in his cross-examination what was the precise amount of the cost. “You are sure it was six glasses of grog, one cigar, and some tobacco, and he paid for it?—He did not. *Q.* You paid for it? I dare say you recollect what you paid?—Yes, I do. *Q.* What was it?—3*s.* 2½*d.* *Q.* I dare say you recollect the coin you paid it in, the twopence-halfpenny?—I do not.” Then I say, “Am I to understand you to say you remember it?—I remember paying that amount. *Q.* 3*s.* 2½*d.*?—Yes. *Mr. HAWKINS:* Did he remember the 3*s.* 2½*d.*?—He said it was over 3*s.* *Q.* Try; perhaps your memory will serve you to say whether he said it was over 3*s.* 2½*d.*?—He did not; he said it was over 3*s.* *Mr. JUSTICE LUSH:* Was it his turn to pay?—Yes. *Mr. HAWKINS:* Did you ask him for it when he bade you good-bye?—I did not. That occurred at Harley Lodge when I asked him about it. *Q.* You paid 3*s.* 2½*d.* before he bade you good-bye?—Yes; Miss Doughty was with him, or I dare say he would have paid it. *Q.* Or you would have asked for it?—I should have told him of it. *Q.* It was your delicacy?—I dare say it was; I am rather delicate.” Then *Mr. Hawkins* asks, “Did you, among other things, ask him how many lumps of sugar there were in the grog?” There is a tone of irony apparent in that question; but the witness answered with perfect gravity, “I do not think I can tell. *Q.* Try?—I could not myself.” Now, for a man to tell you that, so far back as 1848 or 1849, he remembers being with *Roger Tichborne* at a public-house—when it is not even a solitary instance; because, according to him, *Roger* always came out at night, and they used to go to some public-house, after or before they went on the Downs walking with loose women—that on a particular occasion they went to a particular public-house, and that he recollects the number of glasses of grog which he and his companion drank, and can recollect to a halfpenny the precise amount paid on that occasion, is evidence which is an insult to one’s understanding. I do not think you will give much credit to such a witness or attach much importance to what he says. *Lady Radcliffe* was asked whether *Roger*, when he was staying at *Tichborne*, was in the habit of going to the



drawing-room with the rest of the family after dinner, and staying with them until the usual hour of retiring, or whether he was in the habit of going out in the evening, and of not coming back. She says he never went out; he came into the drawing-room like other people after dinner. Lewis, however, says that Roger got out by stealth, by clambering over the wall. You must judge for yourselves whether you can believe the evidence given by that man. The material part of it is the statement about the piercing of the arm with the pointed iron, because that might account for the mark on the defendant's arm, and while it would get rid of the inference as to his being Arthur Orton, drawn from the supposed fact of his having had a tattoo mark of his initials which has been got rid of, it would tend to identify him as Roger, by showing that he has a mark similar to that which would have been caused on the arm of Roger, if Roger had been pierced with a pointed instrument such as this witness describes. So much for the evidence of Lewis.

We now come to the witnesses from Poole, of whom the first is Martha Legg, the laundress, who was first married to Eli Fisher, but afterwards married a second husband of the name of Legg; and she knew Roger Tichborne during his stay at Upton in the latter part of 1852. At that time she used to do his washing; and she says that on one occasion there was a bill for washing amounting to 16s. or 17s., and they wanted to pay her, and John Moore produced a sovereign, and she had not change, and then Moore said, "What shall I do? we cannot get any change here;" and Roger said, "Give the laundress a sovereign; and you need not bring back any change, laundress, as you do the linen very nicely." "Well, I thanked him," she said, "and told him I hoped he would not only come back very shortly, but come back and remain at Upton." She is asked, "Do you remember any other occasion when you had a talk with him about a dog-whistle?—Yes. After I had taken the sovereign I found a dog-whistle in the pony drive as I was carrying the linen home the next time. When I went into the pantry I blew the whistle, and made a noise with it. Q. Did you go to Master Roger about it?—He heard the noise. I blew the whistle, and Roger heard it, and I said, 'You gave me a sovereign last week, and I have brought you a whistle this week.' He was in the pantry. He said, 'I am extremely obliged to you for bringing me the whistle; I had lost it, and I must have bought another.'" She goes on to say she used to see him at the Roman Catholic chapel, and noticed his head and his eyebrows; and then she says: "The defendant is the gentleman that I knew as Roger Tichborne. Q. Do you recognize him by anything else but his head and his eyebrows?—The upper part of his face, he moved his eyes like that," and she shows how. Then Dr. Kenealy puts cer-

tainly a very leading question: "He moved his eyes like Roger Tichborne; that is what you mean?—Yes." Then my Brother Mellor asks, "How was it?—When he spoke and looked at any one he had a blinking with his eyes, or a twitching with his eyes; I do not know what would be the proper word. Dr. KENEALY: Is there anything else you remembered him by besides that?—His hair was dark brown, and he had small hands. Q. Did you and he often have a bit of a gossip?—I have never gone in the pantry without a gossip. Q. Did you gossip with him?—With him or with John Moore. Q. I believe at that time you used to be called a very flattering name?—Yes. Q. They used to call you 'the pretty laundress from Bath'?—Yes, they did. Q. Sir Roger used to have a bit of a gossip now and then?—Sir Roger was never in the pantry alone with me. I never had any private conversation. Q. You always took care to have more there?—John Moore was there, or else Tom, and sometimes both of them. Q. Who was Tom?—A man servant. I never knew him by any other name than Tom. I believe his name was Tom Carter." She is again asked about his hands and feet, and she says that both were small.

The witness appears to have sought out the defendant. In 1869, about two years before the first trial, the defendant went down to Poole, and went to the London Hotel, and the witness went to see him there. She says, "I called at the London Hotel, and went upstairs. I knocked at the door, and a voice said, 'come in.' I went in and closed the door. Two gentlemen were in the room; one was Sir Roger Tichborne and the other was a gentleman I do not know. Q. What did you do when you went in?—I looked up and down both gentlemen thoroughly. I went to the gentleman that was sitting by the side of the table, and said, 'How do you do, Sir Roger?' He said, 'I do not know you.' I said, 'My name is Legg.' He said, 'I do not remember the name at all.' I said to him, 'I will tell you another name; my name was Fisher.' He said, 'I have no recollection of the name, but I have a recollection of your face, you are my old laundress.' Q. Did you say anything else to him?—Yes: I said, 'If you recognize me as your old laundress, what would be the colour of your linen?'"—A very pertinent question to be put by a laundress. "Q. What did he say to that?—He said, 'What are you alluding to? my fancy shirts, or the pocket-handkerchiefs with the dogs' and stags' heads on them?' I said, 'Perhaps both:' that was my answer to him. I said, 'What colours were they?' He said, 'Some blue, some pink, and some purple.' Q. What did that apply to, the shirts or the pocket-handkerchiefs?—The shirts. Q. Was that right?—That was quite correct. Q. Did you ask him any question with reference to the pocket-handkerchiefs?—I never asked him any questions with reference to the handkerchiefs, but he asked me questions. He said, 'How is

your husband? I know him; he is a very old gentleman with a fresh colour like yourself.' That was quite true. Q. Which husband did that refer to?—My first husband, Eli Fisher. Q. I thought you said he said, 'How is your husband? I know him; he is a very old gentleman.' Was your first husband then alive?—He was dead; I had married again. Q. Then how could he say, 'I know him, he is a very old gentleman?'—He knew him when he was at Upton. My husband was living when Master Roger Tichborne was at Upton, when I washed for him. It is about eight years ago he died. Q. Do you remember what he said next?—I told him my husband was dead. Q. That was when he asked after the old gentleman?—When he asked for my first husband. Q. What did he say?—He said, 'I am very sorry your husband is dead,' and then he asked me how my children were. He said about my first husband, that he was an old man, old enough to be my father. He asked me about my family, about my children, and how they were. I told him my eldest son was in Rio Janeiro. He said, 'I hope he will never meet with what I have met with,' alluding to his wreck. I said 'I hope not.'" Then she says, "We talked about the dog-whistle. Q. What was said about it?—I asked him if he remembered it." Then my Brother Mellor says, "Tell us the very words you used?—I said, 'Do you remember my bringing your dog-whistle.' He said, 'Stay a moment, I will recollect.' He considered, and said, 'I do recollect your bringing me something.' I said, 'A sovereign,' and he said 'No, a dog-whistle.' The LORD CHIEF JUSTICE: You put it to him in the shape of a question?—I put it to him in the shape of a question. Q. Do you remember anything being said about the pocket-handkerchiefs?—I asked him about the pocket-handkerchiefs before I left. I asked what his pocket-handkerchiefs were like. He said, 'Dogs' heads in the corners of some, and stags' heads in the corners of others.' Q. Was that correct?—It was quite correct. Then I asked him respecting some white trousers. I asked him if he remembered sending me white trousers muddy to the waist. Q. Some white trousers, or a pair of white trousers?—'White trousers.' His answer to that was, 'A good many times when I got into the mud.' Q. Did he tell you how he had got into the mud?—He told me it was when he could not get ashore with his boat." Then she speaks to his identity, and says that, in her opinion, he is the same man. Then there is a good deal of cross-examination about the colour of the shirts; and she says that some were blue, and some pink, and some purple, some were striped, and some had dogs' heads, and some stags' heads; and she is asked a good deal about the pattern of the shirts. I do not think all that is of very much importance, or whether in the conversation with the defendant he was precisely accurate as to whether they were stags' or dogs' heads. You would



not expect him to recollect those precise particulars; the great point is, did he tell her, on her asking the question, that the shirts were fancy shirts—things which she, as laundress, says were not at that time much in vogue—so that the fact of his giving her on the whole what was substantially an accurate answer, made an impression on her mind. If so, it is a striking fact, and ought to carry great weight with it, unless you see a solution in the possible fact that these things were left behind by Roger, and never destroyed or made away with, and that, when the defendant came over here and was received by Lady Tichborne as the true Roger, he may have taken possession of these things, or have seen them, and so have become aware that Roger had shirts and handkerchiefs with figures upon them, and thus was able, when asked by this woman, at once to answer as knowing the fact. She is cross-examined with a view to show that her visit may not have been unexpected by the defendant. But she says she went without being invited. She heard he had been to Poole, and was coming again, and as she heard he was coming, she made inquiries. She says, “I went to the London Hotel to make inquiries, and the person at the bar said he was at breakfast, and asked me to call again in half-an-hour if I wanted to see him. I was living in Perry Gardens then, and I came back again. I went to the bar again. The lady there said, ‘The gentleman is engaged; you must call again in a few minutes.’ ‘All right,’ I said, and I called again.” The cross-examination has reference to the possibility of this woman’s name, or her having called, having been made known to the defendant, so that when he saw her he would be prepared to say she was his old laundress. Of course, if Carter was about, and saw her that may have happened. We do not know that it did, and it may be that the defendant recollected her as his former laundress, although he did not recollect her former name. It may be that it was a genuine recollection of her as his laundress when at Upton. Then she is asked by what she recognized him, and she says, “By the moving of the eyes, and when he smiled there was the same look across the brow. He moved his eyes when he spoke and smiled, the same as I had noticed in the pantry in former times. Q. Do you recollect when he moved them in the pantry?—He used to do it very often; I used to notice his doing it. Q. What made you remember him?—Nothing more than those three things; first, by the smile and the moving of the eyes; secondly, by his calling me his old laundress, and telling me I was not altered, which I knew I was not; and thirdly, by telling me I was the very person that had an old gentleman for a husband. Q. Those three things completely convinced you?—Those three things, and by his answering my questions, I was thoroughly con-

vinced he was Sir Roger, and no other person. I knew no other person could tell me."

Then there was a man of the name of Dymott, who lives in the neighbourhood of Upton, being owner of twenty-three acres of heath-land there. He saw Roger Tichborne out coursing, in all four or five times, but never spoke to him; yet he is gravely asked, "Do you remember Mr. Roger Charles Tichborne well?" and he answers, "Yes. Q. Could you tell me what the colour of his hair was?—Not much difference from what it is now I don't think. Q. Do you remember anything about his walk?—Yes. Q. What was it?—I have seen him walking in the Bound Road. Q. Was there anything in his walk do you remember? Anything peculiar in his walking?—Well, I do not think there was much. Q. Was there anything?—No, I do not think there was. Q. Did you ever notice anything about his eyes or eyebrows?—Not particularly. He has been close to my house and I have seen him, and there is a feature exactly as it was then, any more than he has fell abroad, he is a great deal more stouter." Then he is asked, not whether the defendant is like Roger, but whether he is like the late Sir James. "Do you remember the late Sir James Tichborne?—Very well. Q. And I suppose you remember Sir Edward Doughty very well?—Very well indeed. Q. Is there any likeness in this gentleman to either of those?—Very much indeed, and I believe the walk." Then I say to him, "The defendant, you say, is like both of them?—Well, Sir Edward was a great deal taller than Sir James Tichborne. Q. You are asked whether there is a likeness to either Sir Edward or Sir James; do I understand your answer that he is like both?" To that there is no answer. "Dr. KENEALY: Sir Edward, you say, was taller than Sir James?—Yes. Q. In what does he resemble either of those gentlemen?—In his walk and his stature, very much like his father was. Q. Very much like his father in walk and stature?—Yes. Q. Do you remember Sir James's shoulders?—Yes. Q. Is this gentleman's shoulders anything like Sir James's?—Very much." Then he is cross-examined by Mr. Hawkins: "Am I to understand he is so like that if you saw him walking you would mistake him for Sir James almost?—Well, I rather think I should. Q. In his walk?—In his walk. Q. If you saw him walking, that is to say, looking at the man as he was walking, you think very likely you would mistake him for Sir James?—Just so." The only description he gives of Roger Tichborne is that "He was rather tall and thin always, very round-featured from the time I first knew him. Q. What do you mean by round-featured?—Round-faced." The evidence of a man who never saw Roger Tichborne except out coursing, and never exchanged a word with him, can obviously be but of little value.

Then there is a man of the name of Robert Bromby, who is a Custom House officer at Poole, and his evidence is worthy of attention. He says he knew Sir Edward Doughty and young Roger Tichborne when they were living at Upton, and he says that in 1852, when Roger was living at Upton, as we know he was, he once chased a crippled wild goose which Roger had shot, and which landed on the Island at Upton. He says, "We both claimed it. Roger sent a boy to take it from me; there was a struggle between us; I would not give it up, and Roger came up and eventually secured it." He saw the defendant, and says he knew him by his likeness to the original Roger, to the Doughty family, and to Sir Edward, and by his forehead and eyebrows. He says Sir Edward had rather thick eyebrows, and that the forehead of the defendant is very much like. He says, "I saw the defendant in 1867, at Poole, on the quay, with Rous and Holmes. I heard him talking, and recollected the voice, and remembered the walk from the manner of the gait." He says he tapped either Mr. Rous or Mr. Holmes on the shoulder, and called them on one side, and said, "Is that Roger Tichborne? Mr. Rous stepped on one side and said, 'What makes you think that?' I said, 'I believe it is Roger Tichborne.' He led the defendant to me, and said, 'Here is some one who seems to recognize you.' I said, 'I believe you are Roger Tichborne.' He says, 'You have the advantage of me; what may your name be?' I said, 'Bromby my name is;' and he considered a minute or two, and said, 'What, the son of William Bromby, the boat-builder on West Shore?' I said, 'Yes.' He said, 'He used to do my work.' I said, 'Yes, I know he did, for when a boy I have been up with him many times to work at Upton.' I told him that. He says, 'I recollect you particularly being up round that way so much, boating; there was no one allowed to land there, but a great many did, for there were a great many rabbits, and at the time a good deal of game about.' Then he said, 'he remembered the wild goose chase, but had no time to stay longer then.' Mr. Holmes said he should like to see me at the London Hotel the following day. I went there, and I asked the defendant if he recollected the black canoe, and his wanting my father to come and caulk her on a Sunday, and that the old man would not come. I knew that of my own knowledge. I said to the defendant, 'We (father and I) went next day.' He said, 'Yes, you did, and got jolly well tight at the house.' That was right; it was not far off. He asked, 'How old Gould was, and how he was getting on,'—Gould, gentlemen, was a fisherman at Poole, who figured at the former trial, but who has not been called on this—"I told him he was doing very well. I told the defendant 'I hoped I should soon see him in possession of the Upton estate and returned Member for Poole at the general election.' He replied, 'I was requested to stand for Poole



before I left England; you will have one of the Guest family in for Poole.' I asked him if he recollected the goose chase. He considered some little time, and said, 'Let us see when was it? It must have been somewhere in November month.' I said, 'Do you recollect about the boy, but I cannot call him by name?' He said, 'I think his name must be Deane.' I said, 'Really I do not know what his name was, but he would be about fourteen or fifteen.' I told him we had a struggle for the goose, and he was the best man." Then he says, "I saw the defendant after that at Alresford, with Mr. Rous. I had a conversation with Mr. Rous, who gave me a pound—a sovereign. The defendant said, 'This is expensive work for you, travelling about so,' and I said, 'It is, very; perhaps you could assist me, just simply in a way.' The defendant said to Mr. Rous, 'Give him something to get a glass of grog with.' Mr. Rous said "What shall I give him?" and the defendant said, 'Give him a sovereign.'"

Now, the incident about the goose took place, the witness says, in 1852. He says, "I talked about it to other people—mentioned it to several people. It was in October, 1867, that I saw the defendant at Poole. If I made an affidavit that it was the 15th and 16th of October, 1867, it was true. I heard he was expected at Poole. Mr. Rous and Mr. Holmes heard all that passed at the first conversation. Mr. Rous took down what passed at the London Hotel. It was expected the defendant would be down at Poole. Some said he had got bigger, stouter. I am not positive whether in the last trial I said, 'I heard his gait was much the same. I observed the same twitch.' Roger's voice was rather a soft voice at the time, not particularly hard, not particularly clear. Having heard Roger when he came about his boats, and on the occasion of the struggle, I knew his voice when I heard him talking. I do not recollect whether at the former trial I said his voice when young was rather coarse and rough. It was so when he had the tussle with me." Now I beg your attention to this:—"When he came about the boat was not in 1852, but in his younger days. I was not with my father in 1852. When we got tight at the house was earlier than 1852. It was when Roger was there as a boy and I was a boy too." Now with regard to what this witness has been saying about Roger wanting his father and himself to come and caulk a boat at the time when the witness was assisting his father, which he expressly says was in his younger days, when Roger and he were both boys, and not in 1852, his evidence, as it seems to me, cannot possibly be true, because we know what time Roger Tichborne spent at Upton. You see this is represented to have taken place at Upton. The witness says he had been up with his father many times to work at Upton, when he and Roger were both boys. Roger wanted his father and himself to come and caulk a boat or canoe on Sunday. "My father would not go,

it being Sunday. We went the next day, and we did it;" and on that occasion, says the defendant, "You got jolly tight." That is to say the father and son got drunk at the house at Upton. This could only have been in 1838, or 1848, or 1851, or 1852, these being the only years in which Roger was at Upton. But the two latter years are excluded, as neither the witness nor Roger were then boys. In 1848 Lord and Lady Dormer were at Upton; that we know from the correspondence between Roger and Lady Doughty, and we know from Lady Dormer's evidence that in that year, 1848, after he left Stonyhurst, he visited her on one or two occasions, I think in the month of August. But when Lady Dormer was in the witness-box, in order to make out that she had had but rare opportunities of intercourse with Roger, and, consequently, could have but an imperfect recollection of him, the learned counsel for the defendant cross-examined her very strenuously, to show that Roger's visits had been confined to one or two occasions, and that then he stayed only two or three days. It could not have happened therefore in 1848, as far as one can judge. She was very much pressed upon it—whether she was sure he stayed more than once—and she says she could not positively affirm he stayed even as long as a week; it might have been a day or two; the stay about that time would be for a day and a night, going back the next morning. "I think," she says, "once or twice he might have done that from Knoyle." But afterwards, when asked, "Was not that what he generally did, namely, not to stay any time there?" she says, "When he first paid me a visit he stayed, I think, a week." Now, is it likely that upon a visit to another person for two or three days, or even a week, he would have a boat, and require that boat to be caulked. Does not having a boat, and wanting it caulked, pre-suppose staying longer than that? Possibly not: he may have wanted it caulked in a hurry by reason of the shortness of his stay. But then, at that time he was no longer a boy, but a young man. Again, could the witness have been many times with Roger Tichborne during that time? Roger was there again in 1851, in the summer, on a visit for a few days, but Bromby does not say it was then, but when both he and Roger were boys. But, if we are to go back to the period when he and Roger were boys, the only visit at which that is possible was when Roger was there with his father in the summer of 1838, when he was only nine years old. Whether you think it likely that a boy of nine would be trusted with a boat, and want that caulked, I do not know; and you must also judge for yourselves of the correctness of the defendant's answer the moment the name was mentioned, when he says, "Oh, yes, I remember your father; he did my work," if the work that he did had reference to a time when the witness was assisting his father, when, as he says, Roger and he were boys. How, if that was so,

could Roger have had work for this boat-builder to do? However, it is quite possible that the defendant may have intended to refer to work done when Roger was at Upton in 1852, and Bromby, the father, may then have done work for Tichborne. The story about the wild goose had, as the witness tells us, been talked about, and would be known to Carter. When the witness asked the defendant if he remembered it, the answer was yes, but that he had not then time to talk to him further. When the witness calls the next day, the defendant remembers all about it. He may in the meantime have the circumstances recalled to his memory; he may have made inquiry about it. It was this man's evidence I referred to when calling your attention to Mr. Gosford's account of his interview with the defendant, who, according to him, knew nothing whatever about Upton or the Island.

Then we have another witness from Poole, Miss Eliza Froud, the old lady who came from Shirley in Hampshire, and who says she knew Roger Tichborne very well. She says she first spoke to him about 1848 or 1849, she being then at Poole. It must have been when Roger was there on a visit to Lady Dormer. She says her mantle caught in the catch of the Upton gate, and Sir Roger, who happened to be at the spot, very kindly opened the gate and dis-entangled the mantle. Then she says, "I was going to get a rose I wished for, and as I went on, I told Sir Roger, and he kindly got it for me, and a few others as well." She says Sir Edward had left Upton at that time. So it must have been after Sir Edward had gone away, and while Lady Dormer was staying there, that is to say, as far back as 1848. Then she tells us some foolish story about her cats. Roger wanted to put her cat into the water, and she resisted it, and he used, she said, to torment her about her cats. Then, speaking of his appearance, she says, "His eyes are exactly the same now, and he has the same twitch in the eye. He annoyed a lady friend of mine very much; I do not know whether he did it intentionally. When she looked up he winked, and when she looked up again he winked again. His hair may have been a shade or two, perhaps two shades, lighter than it is now, but the brow is exactly the same. When he spoke, when young, there was a sort of lazy look, as if he was first going to lay back; and the eyes are exactly the same. There was a sort of lazy look about the mouth. I recognized it the other day when he was talking. The fall of the eyebrow used to take place when he got a little excited; and the brow fell down." She says she attended a meeting at the sale-rooms at Southampton, at which the defendant appeared, but she does not seem to have recognized him as soon as she saw him. She says, "After a short time, I recognized him. I watched him, and quite forgot where I was. I was very nervous, and said something aloud,



and I was very much ashamed. I spoke to him that evening, and remembered his voice. He recognized me first." Then she says, "I felt some thumps in my back, three or four times"—What she meant by that I am sure I do not know—"I was ill, and thought Sir Roger was looking at me in the face. I got an interview with him at the hotel. I had a conversation with him for about five minutes. There was the hair—the parting of the hair—the eyebrows and the mouth exactly, and the eye. I observed the lazy look about the mouth when he spoke. He is certainly the old Roger Tichborne of 1848." No doubt that is her honest opinion; but you remember the old lady, and you must judge whether her opinion in the matter is of any value at all.

We have next a man of the name of Hewitt, who was formerly in the service of Mrs. Hopkinson, the mother of Mrs. Seymour, who lived at Bath the greater part of the year. He was in her service from 1835 to 1850, in the capacity of footman; and when Mrs. Hopkinson was in the establishment, he served at Mr. Seymour's as young ladies' footman, and under-butler and valet. We know she went to Knoyle every year to spend the autumn and winter when Mr. Seymour and the family were there. He used to valet young Roger, brush his clothes, clean his shoes, and go out ferreting and shooting with him. He says there were a great many rabbits, thousands of them, at Knoyle, and Roger used to be constantly ferreting and shooting during his stay there. He also speaks of the boxing, and he recollects Roger had small hands, and recollects his walk; and he remembers Mr. James Tichborne, and sees a likeness between the defendant and Sir James, especially in his walk. The defendant, he says, walks like Sir James did. He recollects him chiefly by his eyes, eyebrows, and forehead; and says, "There is a very great likeness to his grandfather in his eyes, eyebrows, and forehead." He says his hair was a dark brown, but not very dark. "What was the peculiarity," Mr. Hawkins asks him on cross-examination, "of Sir James's walk?—There was a sort of spring or limp occasionally. Q. I do not know what you mean exactly by a spring?—Why, if he started off into a quicker pace than usual, there was a sort of a spring with one heel—one leg." And with this walk of Sir James he compares the walk of the defendant, and says he finds a resemblance. Then he says—and this is material with reference to what comes afterwards—that Roger used to go out shooting every day, attended by the keeper, Thomas Baker. He speaks of Roger having fancy shirts of a particular pattern, some striped and some with fancy figures, he does not know whether birds or dogs, but something of that kind. He says that having heard that the defendant had come down to Swansea, and was at the 'Mackworth Arms,' he went to see him

after having spoken to a Mr. Crook. "I asked him if I could see Mr. Onslow; I did not send my name, because he would not know my name. Q. Crook knew your name?—No, he did not, that I am aware of; he never asked me my name. Q. Mr. Norris did?—Oh, he knew my name well enough; we were boys together. Q. And you asked to see Mr. Onslow?—Yes; he came downstairs to see me. Q. He asked you who you were, and what you were?—Yes. Q. And what you knew about Sir Roger?—Yes." Here again we have Mr. Onslow interrogating a person prior to his having an interview with the defendant. "And you told him?—I told him as near as I could tell him what I knew of him. Q. What became of Mr. Onslow then?—Why, he had an interview with Sir Roger. Q. Did Mr. Onslow leave you?—I was downstairs. I went upstairs with him. Q. How soon afterwards?—I went up with Mr. Onslow. Q. And when you got upstairs?—When I got upstairs Mr. Onslow went into the room. Q. What became of you?—I was on the landing. Q. How long did you remain on the landing?—About two minutes." Then my Brother Mellor asks, "Was that all that passed between you and Mr. Onslow before you went upstairs?—He asked me what I knew of the Seymour family and Mr. Tichborne. Q. And did you tell him what you knew of him?—Yes. Q. And what you knew about the Seymour family?—Yes, he wanted to know what I knew about the Seymour family, how long I lived with them, and so on. Q. What else?—Nothing particular, only about Roger Tichborne. He asked me if I thought I should know him when I saw him. I told him I thought I could recognize him unless he was very much altered." Then he is taken into the room. Mr. Onslow opened the door and beckoned him to come in; and he says, "I found Mr. Onslow there, and Sir Roger, and Mr. Whalley, and Mr. Crook. Q. Now the moment you got into the room did you recognize him?—Not directly, not until I had looked at him some minute or two. Mr. JUSTICE LUSH: Did Mr. Onslow remain in the room?—Yes. Mr. HAWKINS: He told you you would find Roger Tichborne there—now what was your first impression of the view?—I thought he had got immensely stout, certainly. I looked at him and noticed the likeness in his eyes. I noticed his eyes and eyebrows, and I questioned Sir Roger about a variety of things at Knoyle. Mr. HAWKINS: Is that all you noticed about his person?—I saw his forehead and eyebrows. Q. That is all?—Yes. Q. And then you began to question him?—Yes. Q. Do you remember what he said?—I cannot say I remember." Now come the questions—and this is important as showing knowledge on the part of the defendant—as to various matters which would be known to Roger Tichborne. "I asked him if he recollected the colour of his grandfather's favourite hunters. Q. What did he say?—He

described them correctly. He said he could recollect them very well; that one was a mare and the other a horse. *Q.* Did he give you any other particulars about them?—The mare he described as a brown mare with four white legs; and the horse as a dark chestnut. That was quite correct. *Q.* Did you ask the names of the horses?—I did; he could not recollect them. *MR. HAWKINS:* They had names?—Yes. *Q.* What were they?—Phantom and Lady Betty—the horse was Phantom. I asked him if he could recollect the pointers. He could not recollect the names of the dogs; but he described their colour. *MR. JUSTICE LUSH:* Did he ask, or you?—I asked Sir Roger. I asked him if he recollected the pointer dogs he used to shoot over. I asked him could he remember the dogs in the first place. He said he remembered the dogs. I asked him if he recollected their colours. He said one was black and white, and the other was liver and white. That was quite correct; that was the colour of the dogs. I asked him the names; he could not recollect the names. *Q.* How many pointers were there that Mr. Seymour had?—I cannot say, perhaps there would be three or four of them; those were the favourite ones. *Q.* Those were the ones he could not recollect the names of?—No. *Q.* The black and white, and the liver and white?—Yes. *Q.* What were their names?—One was Rock, and the other was Guage.” Then Mr. Hawkins says, “Those names seem fresh in your recollection?—I knew the dogs well. *Q.* So did Roger?—He recollected the colour. *Q.* I mean Roger Tichborne while in Knoyle knew the dogs well, did not he?—No doubt he did when he was there: they were the dogs he went out with. *Q.* And going out with them he would have to call Rock and Guage?—No; it would be a great chance; the keeper was always with him. *Q.* But surely he would know the names perfectly well?—Well, he certainly might know that. *Q.* You would?—Yes, I knew them.” Then I say, “The keeper always went out with him, did he?—Yes, your Lordship. *Q.* How often have you known the keeper to go out with him?—Whenever he went out with the pointer dogs. *Q.* How often would that be in the course of a visit?—Well, perhaps he might go out every day in the week. *Q.* What time of the day?—Sometimes early; if going four or five miles away shooting, he would go out perhaps at seven or eight o’clock in the morning. *Q.* And be out all day?—And be out all day. *MR. JUSTICE MELLOR:* Both you and the keeper used to go out with him?—Yes.” Let us pause here for a moment. The defendant recollects the colour of the dogs, although he does not recollect the names. From the memory which he has exhibited on so many other matters, one might, perhaps, have expected he would have remembered the names. If you had two favourite dogs in the course of your life, you would probably recollect their names;



but it does not always happen so. What is more material is that this witness tells us that Roger was in the habit of going out every day with the keeper, shooting and ferreting, and that he did that nearly every day when at Knoyle. We know that every year while at Stonyhurst Roger spent part of his vacation at Knoyle, and we know that he was afterwards at Knoyle in 1849 staying some short time. Now, you would suppose that Roger would, of course, have recollected the shooting and sporting at Knoyle, and you are not surprised that the defendant, if Roger, should recollect it, because it is quite natural that he should. But there is this awkward circumstance, that before the period when he saw this man, when he was cross-examined as to what had occurred when he was at Knoyle, he declared positively that he never had a regular day's shooting there. When I have to call your attention, a little further on, to the cross-examination of the defendant with reference to the knowledge he exhibited, or failed to exhibit, as to the life and habits of Roger Tichborne, you will find that questions are put to him as to the way he passed his time at Knoyle, and as to his having shot there; and you will find that he expressly declared that he never had a day's shooting there. He is asked, "Did you ever shoot at Knoyle?" and the answer is, "No. I may have gone out, but I never had a day's shooting there." Yet after the trial, at the time this man comes down to him, he not only recollects going out shooting as the witness describes, but he recollects the pointer dogs he shot over, as regards their colour, although not as regards their names. This is certainly much calculated to shake one's confidence, either in the witness, or in the reality and genuineness of the defendant's knowledge; because, if the witness is speaking the truth, it would certainly seem as though, after being pushed on that subject at the trial, the defendant had thought it necessary to make inquiries, and had found some one who knew what had been Roger's habits and pursuits at Knoyle, and what were the dogs which they had at Knoyle. And if this had been done with reference to the dogs, it might equally have been done with reference to the horses. It is difficult to see how he could have possessed this knowledge afterwards, as the genuine production of his own memory, if on his examination at the trial he had no memory on the subject. The witness speaks to a further conversation, and it is subject also to remark. He says, "Roger asked me then if I recollected his buying a dog of the keeper. And I told him I did; I recollected his buying the dog. He asked me if I recollected anything of the colour of it. And I told him he had better answer the question himself. Q. Did you remember it?—Yes. Q. I suppose he did answer it himself?—He did. Q. And answered it, of course, correctly?—He did. Q. What did he say?—He said the dog was a mixture of black

and grey ; a rough terrier dog, black and white. *Q.* Do you remember any other conversation?—Yes, the name of the dog also. *Mr. JUSTICE LUSH :* Who asked the names?—Sir Roger answered the name. *Mr. HAWKINS :* That is to say, he put his own question, and answered it?—Yes. *Mr. JUSTICE MELLOR :* What was the name?—Rough. *Mr. HAWKINS :* Was that all, or was there more conversation?—There was more.” Now, gentlemen, I must beg your attention to this: “I questioned him if he recollected the colour of the hair of the butler Thompson, who was there.” Thompson, you recollect, was butler in Mr. Seymour’s family for years, and remained in the service, I think, until Mr. Seymour’s death, after which, the man, desiring to set up in business for himself, took a house in St. James’s Place, and let lodgings ; and that was the place where Roger, when in London, invariably stayed, unless the Seymours were in town, and he went to the house in Upper Grosvenor Street ; but Thompson’s was his usual place of resort when in London, and, of course, he knew Thompson perfectly well. The witness says, “I asked him if he recollected the colour of his hair, and he said it was gingery ; I suppose he meant red.” Then I say, “What he said was ‘gingery’?—Gingery, my Lord, and that was correct.” “Then,” says the witness, “I asked him if he knew of any defect in that man, whether lame or anything? He said yes, he did ; he was blind of one eye. *Mr. HAWKINS :* Anything more?—I asked him which eye ; he told me the right eye. *Q.* Did he give you any more description of him?—I asked him how he shot, from which shoulder he shot. *Q.* Who?—The butler, Thompson. He used often to go out shooting. He said ‘he shot from the left shoulder.’ *Q.* Of course that struck you forcibly?—It struck me that he must know the man. *Q.* Mr. Onslow was there all this time?—Yes.” And then the question is put ironically, “And did not laugh while these questions were going on about Thompson, did he?—I cannot say ; I never noticed him laugh. *Mr. JUSTICE MELLOR :* Can you tell me whether this interview at Swansea was after the defendant had been examined at the trial? *Mr. HAWKINS :* Long after. *Dr. KENEALY :* August, 1872, he said, my Lord. *Mr. HAWKINS :* Do you remember whether he told you anything about the butler’s room—about the cottage?—Yes. *Q.* Did you ask him where that was?—Yes, I asked him where that was. *Q.* And what did he tell you?—He said it was just across the road from the front door. *Q.* Do you recollect asking about the butler’s room, whether he recollected doing anything, smoking in the butler’s cottage?—No, I did not. *Q.* Try and recollect ; was nothing said about smoking there?—He said ‘that was where he used to go over to smoke with his uncle Alfred.’” My Brother Lush is struck with that answer, and says, “He said so, did he?—Yes, your Lordship. *Mr. HAWKINS :* That was his expression,

was it?—Yes. MR. JUSTICE LUSH: He called Alfred his uncle did he?—Yes, your Lordship. MR. HAWKINS: Was that correct?—Yes, quite correct. Q. It must have struck you as very odd that he should recollect the very room where he smoked?—Well, yes; certainly it struck me that he knew the house, and the room, and the cottage. Q. He must have known the room?—Yes. Q. Was anything said about the pipes he used to smoke?—No. Q. Was nothing said? Do you recollect what sort of pipes he used to smoke?—No. Q. Try?—No, I do not recollect anything about pipes.” Here again the same observation has to be made: here is a perfect recollection of the butler at Knoyle, even as to his having lost an eye, and his peculiarity of shooting from the left shoulder in consequence of that loss. He recollects about the butler’s cottage, and that he used to go there with his uncle Alfred to smoke. All these questions were put at the former trial on cross-examination, before the defendant had seen this witness, and in all these respects, as far as we can judge from his answers, the defendant manifested the most entire and absolute ignorance. He did not remember the butler; he did not remember the name of the butler; he did not know who Thompson was; he had no recollection of the cottage, or of going to smoke there; and when a photograph of the cottage was shown to him he did not recollect it. I shall have to call attention to that part of the cross-examination by-and-by. I should have said it was quite possible that a man might have forgotten a great number of those things, but here knowledge is exhibited, and the knowledge is perfect. But, what had taken place in the meanwhile? The whole of the defendants’ case—when I speak of “the defendants’ case,” you will understand that I mean the defendants in that trial—had been developed in the speech of the Attorney-General, and these things commented on, and in that way the attention of the defendant must have been attracted to the different points on which he had failed to show the necessary knowledge at the trial—on which he had in fact broken down, and had shown himself wanting in the knowledge which might have been expected of Roger. But when this man is brought into contact with him at a later period, the defendant knows all about it: he is aware that Thompson was the butler; he is quite aware of his peculiarities, even to the colour of his hair; he is quite aware that it was at his uncle’s cottage that the butler lived, and that he used to resort there with his uncle Alfred for the purpose of smoking—all which things were unknown to him before; and, therefore, we must say, I think, with reference to the evidence of this witness, that, although if we could be satisfied that this was all genuine on the part of the defendant, and that he had been able to answer these questions without having had previous knowledge of their importance, and of the expediency of furnishing himself with the necessary information, it would



have been most cogent in his favour; yet if, by-and-by, when you come to see what he said on this subject, you should be satisfied that at the trial he knew nothing at all about it, it has just the contrary effect. And so far from the evidence of this class of witnesses benefiting the defendant, I think his counsel would have shown much better judgment in not calling them. Either the witness is putting into the mouth of the defendant what he never has said, or the defendant was passing off on the witness as the knowledge of Roger Tichborne knowledge which he had first acquired since the former trial. Of course, it all depends upon what you think the knowledge of the defendant was at the time of the trial, anterior to his interview with this man. The witness says he saw the defendant about last August twelve-month, that is, August, 1872, about a year ago. The defendant had been cross-examined in 1871. There had been an entire year between that and the time of seeing the witness, in which time, of course, there would be abundant opportunity to acquire the information and knowledge, the absence of which had been signally manifested and dwelt upon on the occasion of the trial. All depends upon the view you take of the defendant's cross-examination, to which, by-and-by, I shall have to call your attention.

Philip Baker, the groom for seventeen years to Mr. Seymour, at Knoyle, also states, that he remembers Roger coming to the stables every day when on a visit there to smoke in the saddle-room. That he had seen him out shooting partridges, pheasants, hares, and rabbits, on the manor at Knoyle; and that he was a very tidy shot.

Then I come to a witness about whom a great deal has been said, and whose name will be long associated with this trial—I mean Miss Braine—upon whom a great deal of heavy ordnance has been directed, much more, I think, than the importance of her evidence called for. She was governess, as we know, to Miss Doughty, from November, 1849, to November, 1850, and she was there when, on the 5th of January, 1850, Roger came of age. The period during which he stayed at Tichborne upon that visit was from nine to ten days, and that was the only occasion on which she saw him. She had never seen him before, and she never saw him again, and even then it was only at breakfast and dinner time, and in the evening when Mr. Tichborne was in the drawing-room, that Miss Braine had any opportunity of knowing him. She describes him as “slightly built, and of the middle height;” anything under six feet being what she calls the middle height. She says: “He had a sallow complexion, with longish, straight hair, very peculiar eyes, and thick eyebrows. His hair was brown. His eyes were so peculiar I felt I should know them again, but I do not know that I can describe them. *Q.* What about colour?—I do not know that I could be certain of the colour; the expression I remember so well. I remember the expression

of his eyes so perfectly. Dr. KENEALY: Could you say whether you had ever before seen eyes of that peculiar expression?—No, I had not. Q. His eyebrows, you say, were thick?—Thick eyebrows. Q. Did you notice his forehead?—Yes, I noticed his forehead. I had a perfect recollection of it. Q. Can you describe it? She makes no answer to that. Then I say: “Give us some idea of it—high or low, broad or narrow?—Well, my Lord, it would be looking at him now that I should describe it, and that is hardly fair. I had a perfect recollection of the forehead and brows. Dr. KENEALY: Do you remember whether it resembled that of any other member of the family?—I do not remember being struck with that at all. Q. Had he any peculiar habit with reference to his features?—I noticed the raising of the eyebrows. Q. Was that a general habit, or did it occur only at times?—I only noticed it occasionally. Q. You had a good deal of talk with him, I suppose?—Yes. Q. Do you remember his voice?—Yes, I remember his voice. Q. Was there any peculiar habit he had in his voice you noticed about his words?—Well, I hardly call that voice: I remember his articulation, a sort of idle way, as if he dropped the words out of his mouth, instead of uttering them; that struck me very much. I do not know whether I make myself clear.” Then I said, “I cannot say you do to me.” She continued—“A sort of idle way of speaking; I have a distinct recollection of that. Q. A lazy way?—Yes, letting the words drop out of his lips instead of pronouncing them distinctly. Dr. KENEALY: Now, how should you describe his voice?—I do not think I can describe it. I remember no peculiarity.” Then she says that the defendant wrote to her at the end of 1867, proposing to come down to Devonshire to see her. She put him off until she came up to town herself. Having come to town, she wrote to him to say so, and he answered her saying that he was laid up with erysipelas, and asked her to be good enough to come down to Croydon, and she went accordingly on the 16th of January, 1868. She is asked what took place at the interview. “Dr. KENEALY: What was your first impression when you saw him?—One of extreme surprise. Q. At what?—His size. Q. A great contrast to the former figure?—Yes. Q. Do you remember what sort of shoulders young Roger Tichborne had?—No, not particularly; I have only a general impression of his figure; his face I have a perfect recollection of. Q. What did you say to him when you saw this great figure?—I said, ‘Do not speak: sit down, and let me look at you.’ He laughed, and said, ‘Well.’ After a few seconds I said, ‘The eyes and brow are Roger Tichborne’s, but the nose is not;’ and then he mentioned a fall he had had from a horse, when in Australia. He asked me if I had not heard of it. I said, ‘No,’ and then he described it. Q. What next took place?—I observed a scar between his eyebrows. I said, ‘I do not remember

your having a scar between your eyebrows,' or some such thing. Then he took up a knife that was lying on the table and played with it; and I said, 'The hands are Roger Tichborne's;' and he gave a very natural laugh, and said, 'Whose hands should they be?' I do not remember any further particulars of the conversation on any definite matters." She says there was sufficient light for her to judge; there was both daylight and candles, and that she examined his features carefully. "Q. Did you notice that articulation that you had noticed in your young Roger Charles Tichborne?—Yes, the same, but slightly altered from the loss of his teeth. Q. Do you remember young Roger Charles Tichborne's accent?—Perfectly. Q. Did he speak English well?—When I first knew him, not at all well. Q. Did he speak with an accent?—Yes, a very strong accent. Q. Did you find any traces of it at Croydon?—I do not remember noticing it at first; it is only in a continued conversation with him I have noticed it here and there. Q. Do you mean at that particular interview?—I do not know that I noticed it then. Q. Did you notice it in any conversation with him?—Yes, frequently; not in whole sentences, but in a word here and there he retains the French accent." Gentlemen, I know some of you are French scholars, and I think you will be rather amused at Miss Braine's notion of French pronunciation. Q. "What sort of word? In what way?—Well, I mentioned two at the last trial, but they will not come when I want them. He pronounces 'mountainous' 'mountainious,' which is evidently the old 'montagneux,' pronouncing it almost French, and many words of that kind."—Here I interposed and said, "A Frenchman would not pronounce 'montanious.'" She says, "'No, I should not, but he does.' But how is it French? I do not follow you.—Instead of saying 'mountainous,' as we do, he carries the French pronunciation with it and pronounces it 'mountainious.' That is pronouncing it with a 'g' liquid?—He puts the 'g' in which is not there, and many words I noticed. I cannot remember which." Here Miss Braine was misled by her mistaken idea of French pronunciation. A Frenchman does not pronounce the second syllable of the word "montagneux" long, but makes each syllable of equal length. Then she speaks of the conversation she had with him during nearly two hours, and says she asked him if he remembered the ball. "Q. When you said, 'Do you remember the ball?' what did he say?—I do not remember his answer. Dr. KENEALY: Did he remember it?—He remembered it, evidently. Q. Did you ask him about any particular incident at the ball?—I asked him if he remembered my getting him to go into his room and locking the door on him." Well, my Brother Mellor thought this must have been a practical joke, and asked her, "Was it a practical joke?—No, my Lord; it was not at all a joke." Then, I ask, "What did he say?—He said he remem-



bered the candle being blown out ; that is all he remembered of the incident. Dr. KENEALY : Will you tell us how it came about ? Mr. Justice Mellor seems to think it was a practical joke. Mr. JUSTICE MELLOR : I thought it was a practical joke getting him to go into the room, and locking the door upon him : I could not understand what relation it could have but to a practical joke. Dr. KENEALY : Perhaps you will tell us ?—On the night of the servants' ball, Lady Doughty had gone to bed early, leaving the rest of the visitors and myself dancing a little longer. The tenants were there ; and some time after the old butler came to me. Q. That is not Bogle ?—No ; I think his name was Moore"—She is quite right ; he was the butler then—" He was a very old man then, and he came to me and said, ' Mr. Roger has had quite enough wine ; if you can get him to bed before you go yourself '—I do not remember the words ; but he intimated that for the sake of the family Roger should not remain up among the servants after he had taken as much wine as was good for him, and he expected me to get him to bed if I could. Q. If you could get him to bed before you went yourself ?—I cannot tell the conversation word for word, only the substance of it. Mr. JUSTICE MELLOR : However, it was in consequence of what he said to you that you got him into his room ?—I stood outside of it, and told Moore to tell him that I wanted to speak to him. He came out of the hall, and then I asked him to pass me and go into his room. Q. As if you were going in to speak to him ?—Yes ; and he was holding his candle so unsteadily that I blew it out. Q. And then ?—I locked the door. Mr. JUSTICE LUSH : Locked him in without a light ?—Yes, my Lord. I may as well mention that no one ever knew that. I never mentioned it at all until after he came home." Mr. Hawkins takes this up on cross-examination and asks, " Bogle was in the house staying at the time ?—He was. Q. It was the old butler who you say called your attention to the matter ?—What matter ? Q. To the matter of Roger's having, as he thought, taken too much wine ?—Yes, I should not have noticed it. Q. The going up to the bedroom was a sort of arrangement or ruse between yourself and the old butler to get him to bed, according to your account ?—I should not use that expression myself. Q. What would you use ; I should like to be correct ? Was it a little stratagem ?—Hardly worthy of the name of that. Q. Well, an insignificant stratagem between yourself and the old butler. I only want you to give me a name ?—I do not think the butler and myself had any plan between us. He said he wished to get him to bed, and I said, ' Ask him to come up to me.' Q. Where was it he asked you ?—He called me out of the hall where the ball was going on, and said as Lady Doughty and Sir Edward had gone to bed, he should be very sorry to see Sir Roger left down with the servants, as he had had quite

wine enough. *Q.* Did the old butler, having suggested that, ask you how you had got him to bed?—He was standing there, he had brought him his candle. *Q.* He brought him his candle up to the bedroom door?—I forget what point he gave it to him at. *Q.* But I want to know?—I cannot help you, because I do not know. *Q.* Did you see him bring up the candle?—I would not swear that I saw him. I do not see how he could get it without. *Q.* You told the butler, or asked him to go and ask Mr. Roger to come and speak to you?—Yes, we had some little conversation about it first. *Q.* One moment; I think I can assist you: did Roger Tichborne come up and speak to you without a candle?—That I do not remember; all I remember is the fact of his having a candle in his hand: the butler was standing by. *Q.* He had the candle in his hand when you blew the candle out?—Yes, he held it so unsteadily, I thought it would fall out of his hand. *Q.* You said you never mentioned it to a human soul. I thought no one was cognizant of the fact but yourself and Mr. Roger?—Of course, the butler was, and he was a very old attached servant, and very anxious to avoid any unpleasantness, and I do not believe, from what I knew of him, that he would mention it in the house. *MR. HAWKINS:* Do not talk of your belief: I dare say you think Bogle would not mention the thing?—No, I do not. *Q.* Did Roger Tichborne, after he got into the room, and you locked him in, knock at the door or say anything?—I know nothing more; I went downstairs.” *THE LORD CHIEF JUSTICE:* “She got away. *MR. HAWKINS:* I am not at all sure. *MR. JUSTICE LUSH:* You locked it on the outside?—Yes. *Q.* Did you take the key away?—No. *MR. HAWKINS:* You did not hear him make a noise or say anything about it? Did he mention the subject to you the next day, and say, ‘What a trick you played me?’—There was something said. *Q.* By him?—Yes. *Q.* He spoke to you the next day?—Yes. *Q.* What was it he said?—I do not remember. *Q.* Have not you the least idea whether he was in a good humour or cross?—He was not at all cross, I know that.” Now if this was a thing known only to Roger Tichborne and Miss Braine, and the defendant recollected the incident of the candle being blown out, which was the striking part of the transaction, it would be a remarkable thing for him to have reproduced; but can we suppose that this story was not perfectly well known throughout the house at Tichborne, within a very few hours after it occurred? Just see the curious combination of circumstances. Here is a young officer dancing away at this tenants’ and servants’ ball, and getting a little more punch, or whatever was the beverage circulating, than was good for him, and the old butler thinking that, as the uncle and aunt and the rest of the company had gone to bed, it would be just as well to get Roger to bed before he got more punch and showed still further symptoms of inebriation, but not knowing

exactly how to do it, goes to the governess and says, "I am afraid, Miss Braine, Roger will drink too much liquor. How can we get him to bed?" And Miss Braine, being of fertile invention, relieves his mind by saying, "You tell him to come upstairs, and he will find me at his bedroom door." So the old butler goes to Roger and says, "There is Miss Braine gone up to your bedroom, and she is waiting to speak to you. Here is a candle." Roger, you know, was young in those days, and being told that the governess had gone up to his bedroom door, what could he do? It sounded, you know, like a challenge, and it would not do for it to be said he would not go because he was afraid to meet the young governess. If that had come out, what would have been said then amongst his brother officers? They might have made fun of him in that case, and I should not have been surprised. Well, he goes up speculating what Miss Braine wanted, and when he reaches the bedroom door he finds her standing there, and whether she is going in first he does not know, but instead of that she pushes him in, blows out the candle, locks the door on the outside, and leaves him there alone desponding in the dark. Do you suppose the butler did not go down and tell Bogle, perhaps over a glass of grog, "Here is Roger half drunk. Miss Braine was so clever that she got him to come upstairs to his bedroom and blew out the light?" Judging from the habits of our domestics, do you suppose that in the housekeeper's room that night, or next day, that incident would not have been the theme of a good deal of joking, and have afforded a rich fund of amusement? How the young officer had gone upstairs to meet the young governess at his bedroom door, and she had made a fool of him. I fancy that would have been talked about; and I cannot give in to the idea Miss Braine suggested that Bogle did not know all about it; and, if he did, is it not likely that Bogle, when he found Miss Braine was coming to visit the defendant, recollecting her as he did as governess at Tichborne, would not refer to this curious incident, which, perhaps, of all the events that happened while she was there, would be best fixed in his memory—the funny story of Roger having gone up to meet Miss Braine at his bedroom door, and then being made a fool of by her—and in this way the defendant may have got hold of the story about blowing out the candle. If he were Roger Tichborne, I should have thought that he would have known more about it; though that does not necessarily follow. And when Miss Braine puts it that the old attached butler would not have thought of telling the story to anybody, not even to Bogle, the trusted servant of the establishment, but that it was a matter confined to Roger, herself, and the old butler, I do not think we can look upon it in that light, or that it must be assumed that the defendant must have recollected it himself without anybody having suggested it, and that there was an impossibility of his acquiring the knowledge of it from some one



else. Of course it may have been his genuine recollection as Roger. All I mean is that I cannot agree with Miss Braine that it must necessarily have been so.

Then the witness talks of the habits of Roger, and his personal peculiarities. She speaks about his hands, and says, with reference to them, what certainly no other witness, either for the prosecution or the defence, has thought of saying. She is asked whether they were bony hands. "Well," she says, "I have never investigated the bones; I conclude there were bones in them"—a flippant answer—"I never supposed," says Mr. HAWKINS, "you skinned his hands, nobody suggested that; but you know what I meant perfectly well?" Then she makes again a very flippant answer—"And you know what I mean." Mr. HAWKINS answers "No, I don't." And I am sure I did not. Then she says, "I do not think they were bony hands, because I have described them as giving me the idea of ladies' hands; as being dimpled like a lady's more than a man's.

*Q.* Where?—The knuckles appeared to be dimpled, the knuckles of one hand; I only remember noticing one hand. Mr. JUSTICE MELLOR: You are now speaking of the time before you were staying there?—Yes. Mr. HAWKINS: The knuckles of one hand?—I believe both, but one I noticed. *Q.* Which was the one you noticed?—The right hand; because he was playing with a knife at the time I noticed it. *Q.* Where?—At Tichborne, and the same thing struck me again. He had a habit of taking a dinner-knife in this way (balancing it)—and I remember it because it irritated his uncle.

*Q.* Taking up a knife and swaying it in that way? (And Mr. Hawkins described the manner).—I did not do it in the air like that.

*Q.* You seriously mean that?—I seriously mean that. *Q.* And then you noticed the dimples in his knuckle?—I did. *Q.* Were all the knuckles dimpled?—I did not observe that particularly.

*Q.* There are not many, only four you know, the fingers?—I did not count them." I may here observe that of all the witnesses we have as to Roger's hands, some represent them as smaller than others, but all agree in their being bony hands; especially the members of the family say he had a bony hand, with prominent knuckles; this lady is quite alone in this respect, when she goes the length of saying that Roger Tichborne had dimpled hands on which the knuckles were not prominent as a man's, but more like the soft hands of a woman. She was asked about the eyes and the eyebrows. "Mr. HAWKINS: Will you describe to me now what was the peculiar eye or eyebrow you noticed?—I remember the expression of the eyes very distinctly. *Q.* What was the expression?—There was an expression of melancholy, and an expression of surprise, that would come over his eyes." Then I say, "That must be a very peculiar expression?—Yes, my Lord, I do not mean to say that the two expressions were there at the same

moment, but he would look very melancholy, and then in a moment there would be an expression of surprise come into his eyes. Q. Do you mean surprise about nothing?—Yes, the moment one spoke to him when there was nothing to be surprised at. Mr. HAWKINS: You said there was a motion of the eyebrows?—Yes. Q. Was it when he was excited, or on what occasions?—I do not know when; I have seen it occasionally. Q. But only occasionally?—Yes. Q. With the lifting eyebrow?—Yes. Q. Was it when he was excited?—I do not know he was excited, I did not notice that; I noticed he had a habit of occasionally raising his eyebrows.” Then I say, “Some persons do it involuntarily and unconsciously, as you must have seen. Others do it when anything excites them; when speaking, or animated, in a moment of animation you see the brow go up. Which do you think it was with him?—I have not observed; I would not say which. Q. But you say you only noticed it occasionally?—Well, of course, he does not always go on with it. Q. It was not a constant twitching?—No, I think not, as far as my recollection goes. Q. Why, did not you at the last trial say he had a constant habit of winking his eyebrows?—Well, I may have said it; I do not remember what I said exactly.” Then Mr. Hawkins reads to her what she had said. “What sort of a forehead and eyebrows had he?” and this is the answer, “His forehead and eyes were remarkable; he had very thick eyebrows, and had a constant habit of moving them, which to me appeared peculiar.”—By ‘constant’ I meant whenever I saw him; whenever any one was talking to him I would be sure to see it some time or other of the conversation; that is what I meant by ‘constant’ then.” Then I say, “Is that what you mean by ‘occasionally’ now?—That is what I mean by ‘occasionally’ now. Q. Because the word ‘occasionally’ stands in very marked contrast to the word ‘constant’?—But when one finds how very shortly one is brought up. Q. But that is your own voluntary expression?—Yes, that was my first experience in a Court of Justice; I have become more careful.” Then she is asked: “Am I to understand you that your recognition was an immediate recognition or not?—Well, before I rose from my seat I recognized him. Q. Was it before he spoke?—Yes, it was before he spoke; before he spoke his forehead and eyebrows came back to me. Q. You knew him by the eyes and the forehead?—Yes: I could hardly call it distinct recognition, but recollection came back to me of his eyes and brows. Q. Let me ask you do you remember this expression at all as used by you, ‘that the old Roger Tichborne came floating about over the whole man’ that stood before you?—I believe I did stupidly say so. Q. Why stupidly?—I hardly knew how to express what I felt about him: I was so astonished at his size, and yet there was a recollection of the old Roger about it. Mr. HAWKINS: About the

forehead?—No. I missed nothing in the hair; I missed the habit of jerking up the head. Q. To shake the hair off his brows?—Yes, he used to do it constantly when I knew him, or frequently I should say rather than constantly. Q. And you missed that, I think, upon the first day?—I did. Q. And you mentioned it, I think, did not you?—No, I did not mention it the first day. Q. You did on the second?—Not at all until I had seen it. Q. Until you had seen it?—Until I had seen the jerk of the head. Q. There was the lock there?—No, the lock did not fall where it used. Mr. JUSTICE LUSH: I understood you to say you missed that motion?—The first day I did not see him jerk his head back, or was not happening to be looking if he did. Mr. HAWKINS: That is the first day. For the two hours you looked hard for the jerk, did you?—No, not the whole time. Q. But you watched for it?—No, I do not think I did particularly; on the first day I did not.” Then she says that on the second day she saw the jerk which she had been looking for, and then said, “That is what I have been looking for some time; that is what Roger had.” The one jerk of the head appears to have gone far to satisfy her. Then there is a cross-examination about the pronunciation of French—as to what she had said about the defendant’s pronunciation in certain words being the remains of his French—especially the word “mountainous.” She says, according to her idea, calling the word mountainous “mountainious” is a French mode of pronouncing it. That may be her notion of French; I confess it is not mine. As I have already observed, a Frenchman does *not* say mountainious, but makes all the three syllables of equal length. But the defendant’s mode of pronouncing it, according to Miss Braine, is one which I rather think is, with a certain class of uneducated people, not at all uncommon; instead of saying “mountainous,” some people say “mountainious,” and if so, that might account for it in a way besides the one by which Miss Braine accounts for it. If it were necessary to resort to a foreign pronunciation to account for it, Spanish is the source to which I should be more disposed to turn. In the Spanish word *montaña*, the *n* is pronounced with a liquid sound, and the second syllable is long. Then Mr. Hawkins puts this to her, banteringly: “Can you trace back to its French origin the word ‘worrit’?” She answers, “the Attorney-General asked me that at the last trial. Q. Then you have had time?—I answered in a foolish way, and said it was purely colonial, but I should have said it was purely vulgar; I think he might have picked that up in England without going to the colonies for it. Q. Your attention was called at the last trial to an expression he made use of, ‘People are ankering about here.’ Do you remember tracing that back?—I remember the Attorney-General tracing it ironically, and my answering it ironically. Q. You said he did?



—I said it may have been, but I answered ironically.” Then Mr. HAWKINS reads what she said: “ Q. Well, now persons ‘hanker’ to see him, spelt like an anchor, should you trace that to a nautical education, or to a colonial, or to a French?—I have not thought of it, but I think it is a little confusion with the French word ancre. I beg you will not ask me to trace his words to their source, I am afraid the Jury might be tired. Q. That would seem bad English to the multitude, as you say, but could you trace any French in that?—Well, now you put it to me, I think it would be. I was answering ironically. The Attorney-General was laughing at me. The LORD CHIEF JUSTICE: That would be a pity; the witness-box is not the place.—I should have thought not, but the Attorney-General was turning me into ridicule. Q. You would trace it back in that way?—Well, it was rather far-fetched, but it may be.” Then I say, “ How would it be traceable back?—I thought he might be confusing it with the French word. Q. But how could that be hankering?—I do not think it is, but the Attorney-General was putting it. Mr. HAWKINS: Another word is ‘respectiable.’ You are directed to this by the Attorney-General: ‘What do you say to the respectiable? Is there a French touch in that?’—Well, it will afford an opportunity for another laugh, but in this mixture of vowels I trace it very much to his French education where he puts ‘ia’ or ‘ie’ where we should simply put a single vowel; it is really the old French education hanging about him. That is my belief. I saw it constantly in his spelling.” Then I say, “ ‘Respectiable’ is not French?—No, but he constantly puts the double vowel where an Englishman would put the single one.” Then she gives another remarkable instance. She says, “ While we are on the subject, my Lord, I can give you an instance that has occurred to me since I was examined—the constant translation of French into English, which is considered very vulgar, in his letters, which any one who wishes to see the truth would see comes from the French. Q. What is it?—‘I will tell you for why.’ That is a translation of ‘Je vous dirai pourquoi.’” I am not aware that we have found that in the letters of Roger, and it may be one of the differences to which importance will, by-and-by, attach. But upon that I observed, “ Do not you know that that is a common vulgarism?—Yes, so it is, my Lord, but it may not be with him.” She is here quite wrong in her French. The translation from the French would be ‘for what,’ not “for why.” “Why” in English is simply an abbreviated form “for what.” In French you do not abbreviate at all, but put “for what.” She speaks about French idioms, but her knowledge of French does not appear very profound. I do not know really that the evidence of Miss Braine was worth saying anything that might be painful or distressing to her. It really comes to very little. She saw Roger

for nine or ten days, of an evening, whilst he was at Tichborne, and noticed one or two peculiarities, and, on seeing the defendant, hastily came to a conclusion that he was Roger ; and I do not know that her evidence was likely to carry much weight with it. But she has been held up to you, by the learned counsel for the defendant, in terms of the highest eulogy and laudation as a perfect pattern of her sex, a paragon of everything that is noble and good, which, of course, is all done with a view of making you attach greater weight to her evidence than perhaps you would otherwise think it deserved. I cannot sit here, holding the scales, as I desire, evenly between the two parties, and go the length of saying that either of them was right in what he said about Miss Braine. It is the only instance throughout the whole of this trial in which Mr. Hawkins, in his most able conduct of this case, has in any way departed from what may be considered to be the strict rule of propriety in observing upon the witnesses, but I think he did go too far in his attack on Miss Braine. On the other hand, I think nothing could be more inflated and extravagant than the sort of eulogy which the learned counsel for the defendant pronounced on Miss Braine. Certainly her conduct is open to remark, and after what has been said it is necessary to make the remark upon it which it properly calls for, because her conduct with reference to the defendant does appear to exhibit a degree of partisanship and indiscriminate zeal on his behalf which may lead us to think her statements must be received with some degree of hesitation. She was the governess and the friend of the present Lady Radcliffe, and professed to have the greatest possible attachment and regard for one who had been her pupil, and who had always treated her with consideration and respect. She knew that the defendant was about to open a charge against that pupil affecting her character and honour ; that he was prepared to say that while he was in his uncle's house he had abused that uncle's confidence, and seduced his daughter, to whom he was ostensibly paying honourable addresses, and she knew that he was about to proclaim that openly, and had already communicated it to persons who were in his confidence. Yet, notwithstanding this, she becomes an inmate of his house, and as an inmate of his house, enjoys his hospitality for months, and when the whole story is out, when the whole mischief has been irreparably done, it makes no alteration in her relations with the defendant. She endeavoured to represent, when here, that she had only become an inmate of his house for the protection of his wife and family, by her society, during the time the defendant was absent. I cannot help thinking that that was an entire misrepresentation ; because in the letter to Lady Tichborne of February, 1868, some months before he went abroad, there is a mention of a lady visitor whom he was anxious to get rid of, but

whom he could not part with until he had got her affidavit. If that was not Miss Braine I do not know who it was; and if I am wrong in that respect, I shall be glad to be set right; but, as far as I can see, that letter can only have reference to Miss Braine, and she, therefore, must have been an inmate of his house some time before he left. At all events, whether she was there or not, I cannot see how it can be said to be consistent with female delicacy, or with the feelings which ought to animate a woman, that she should have maintained this familiar intimacy with a man who declared he had seduced her pupil. If she did not believe the statement, she must have believed him to be a vile, abominable slanderer; if she did believe it, she must have believed that he was a man who had been guilty of seduction in the very worst form in which seduction can present itself—seduction bringing dishonour into his own family, and which could only be consistent with the most scandalous abuse of confidence placed in him. If Miss Braine believed either the one or the other of those two alternatives, as a woman she ought to have said “I will not longer consort with that man;” yet, according to her story, after the whole thing had been proclaimed to the world, she used to go and sit in his bedroom by his bedside when he was ill, and read to him, and write for him. After that, I cannot say I think, looking at all the circumstances, that it was at all consistent with truth or with anything like reason, that the learned counsel should hold her up in such glowing colours as a paragon of her sex or as a “ministering angel.” I do not say that these things ought to destroy the effect of Miss Braine’s evidence; very far from it. It was a matter of delicacy, of good taste, of good feeling, whether under the circumstances she would associate with the defendant on terms of such close and familiar intimacy; but it does not affect her credibility to the extent of saying you will not receive her evidence at all. She seeks to account for it in this way. She says, “I could not but feel that what he said had happened with my pupil ought to make me shun the man, and that I should avoid him, and not go to his house, still less sit by his side, and comfort him; and I should not have done so but that he was persecuted and oppressed.” I can quite understand that though you think a man’s conduct has been abominable, you may think that truth and justice are superior to all other considerations. A person may say, “In a court of justice I will tell the truth in order that justice may be accomplished, and although I abhor the man, yet so far as his claim is just, and he asks for no more than his rights, he is entitled to have my testimony, and if the truth can avail him he shall have the benefit of it, whatever I may think of him, and however I may think his character and conduct detestable.” That I can quite understand, and if Miss Braine had said, when he declared that he had seduced



his cousin, "Although it made me shun him, I was still prepared to say in his behalf what I should have said under other and different circumstances, and come into the witness-box and tell the truth that justice might be done," I should have appreciated her conduct and applauded it; but, when the learned counsel says that, after these facts were brought to her knowledge, the fact of her still leaning as it were familiarly and affectionately to the defendant is a circumstance which calls for the admiration and praise of all honourable men, and entitles her to the character of "a ministering angel," I for one must protest against that conclusion. Still the evidence of Miss Braine must be taken for what it is worth—that of a very zealous partisan, but of a person of intelligence and power of observation, who had some opportunity of observing Roger, and who, on account of what she did observe, is worthy of attention; and her judgment as to whether the defendant is Roger Tichborne or not is entitled to such consideration at your hands as you will think right, under all the circumstances, to give to it.

Then, Gentlemen, there is one more witness, but whose evidence is not of much account on this part of the case, though we shall have to consider it attentively on another—I mean on the sealed packet—and that is Mr. Bulpett, and my reason for saying that Mr. Bulpett's evidence with regard to the identity of the defendant with Roger is not of very great importance, is simply this: that up to the time Roger left England Mr. Bulpett was never brought into personal communication with him. All he tells us he knew of him was that he saw him when he was occasionally hunting with the H. H. hounds. Therefore, when I mention him as one who spoke to the identity of the defendant with Roger I do not think it is worth while to trouble you with what he said; seeing him only half-a-dozen times, he cannot be a witness so confident as those who saw him much more frequently.

The JURY: Then there was Lady Burroughes.

The LORD CHIEF JUSTICE: Yes, the last witness. She danced with him at a ball on one occasion, and I rather think it was only for the sake of her name that she was called. The learned counsel for the defendant, I remember, said with earnest emphasis, "Thank God, I have no Lords or Colonels amongst my witnesses; I have only the rough, honest fellows of the Carabineers." And I was therefore quite surprised when he brought forward a lady with what is called a handle to her name, especially as it seemed to me that it could only be for that reason that she was called; because to say that a lady who danced with an officer on one single occasion some twenty years ago or more could be a competent witness as to whether a man she now sees was the same individual, seems to me very idle indeed. I did not even call your attention to Lady Catherine Wheble, one of Lord

Howth's daughters, though she had seen Roger Tichborne and danced with him at the Dublin balls all the season. It is very well to have the impression of a lady who has met a gentleman in the ball-room and danced with him occasionally, but it really weighs so very little in the scale when you have so many witnesses who are so much better able to form a judgment from their familiar intimacy with the person whose identity is in question, that it hardly seems worth while to dwell upon the evidence of persons of that description.

Gentlemen, I now pass to another and very important head of evidence, namely, the witnesses from the Carabineer regiment, called on behalf of the defendant; and the first with whom I propose to commence is Lieutenant-Colonel Norbury, who was a major in the regiment. Colonel Norbury had a long interview with the defendant. He first received a letter from the defendant, one of those circular letters, and then a letter of the 9th of July, 1867, saying that the defendant intended to do himself the pleasure of calling on him on Thursday: "You will find me much stouter," he says, "than when I was in the Carabineers." Then it seems that Mr. Holmes thought it expedient to send for Cairns, the serjeant-major, from Sandhurst, who had been made instrumental with Major Haywood, in order that Cairns might have a talk with Colonel Norbury before the colonel saw the defendant, and accordingly when the defendant gets down to Malvern, Cairns is sent over with a fly to fetch Colonel Norbury from his residence, which is in the neighbourhood, and two or three miles from Malvern; and Carter is sent at the same time. Why they should both be sent one does not exactly see; but the result was this: Carter occupies the box, so that Cairns, the sergeant-major, must have been inside with the colonel; and, according to Cairns's account, he has a good deal of conversation with him on the subject of the defendant. I will now state to you what passed between Colonel Norbury and the defendant. The colonel seems to have made up his mind before the defendant called on him to test him thoroughly. He is asked "About how long were you in his company before you recognized him?—I was a long time in his company before I fully made up my mind that he was the man; but, in the course of a few minutes—soon after he spoke, I think—I began to recognize him. Before my recognition was complete there was a considerable time. Dr. KENEALY: Before you fully made up your mind?—It was a long time before I fully made up my mind. Q. What did you first begin to recognize in him that brought back your old comrade Roger?—I can hardly say first at this distance of time. It is a considerable time ago. To the best of my belief it was looking at him; looking at his features; the expression of his countenance; I cannot positively say. One thing I recognized him

by was his voice. Whether that occurred to me first, or his features, I really cannot say. *Q.* You thought you recognized his voice?—Yes; I cannot say whether I recognized his voice or his features first. *Q.* Gradually it began to come over you that he was the man, I suppose?—I first said, either, ‘I do not recognize you,’ or, ‘I should not’—I think the expression I made use of was—‘I should not have known you.’ I gave him to understand I did not recognize him at that time. I said, ‘If you will sit down and let me ask you some questions’—— He said he had come there for that purpose. He sat down, and I talked to him, and asked him some questions. **THE LORD CHIEF JUSTICE:** Tell us in your own way, as far as you recollect, what passed, and the order in which it passed. We cannot expect it all minutely, or in what order the questions followed, but, as near as you can, give us what passed?—We both sat down. I sat opposite to him, to see his features as well as I could. I asked him a good many questions about the regiment. *Q.* Can you tell us any of them?—I can tell you a good many of them; I cannot pretend to say that I can tell you all. I asked him about different officers belonging to the regiment, their personal appearance, their nick-names. *Q.* Can you mention any one of them?—I remember Hawker, Wardlaw. *Q.* I suppose these came one after the other. Can you tell us what he said? When you asked him the appearance of Hawker, what answer did he make?—I cannot give his answer in words, but his answers were certainly, with respect to Hawker, correct. *Q.* The answers whether he was tall, stout, or dark, or fair. Is that what you asked him?—Those are the kind of questions I asked him with respect to the officers. I know his answers were correct. *Q.* Did you ask him whether Hawker was tall or short, or fair or dark, in that way?—Those were the sort of questions that I put respecting the officers. I cannot say I put them exactly in that way. I might have said, ‘What was Hawker?—for he is dead—was he a tall man? was he a short man, was he dark, was he fair?’ I might have put it in that way. *Q.* You do not recollect what you did put?—Not further than the general sort of questions. *Q.* Do you believe, Colonel Norbury, that was the style of question you adopted towards him?—One of the great objects I had in asking him questions was to ask him in such a way as not to give him information. I was very careful during the whole of the interview to ask him questions in such a manner that if he did not know the right answer he should not be able to get information from me”—a very judicious and proper way of making the inquiry. **“DR. KENEALY:** That was the style in which you questioned him, as well as you remember?—About the officers’ personal appearance. There were others besides Hawker and Wardlaw—Johnson and Morton. I picked out four who were dead. They were all dead, therefore I



felt sure he could not have seen them since his return to England.

*Q.* Were the answers that he gave correct as to the personal appearance of those gentlemen?—I cannot recollect that he gave any wrong answer. They were such as to lead me to believe that he gave them from a knowledge of the individuals to whom they referred. I asked him if he remembered Portobello barracks, where he joined. He said, ‘Yes, very well.’ I said, ‘Which side the barracks were the Carabineers quartered on as you went in at the gate?’ He said, ‘The right hand side.’ That was correct. *Q.* What other questions?—I cannot tell you that these all came in the order that I am telling you now. *Q.* We do not expect that, Colonel Norbury?—I said, Do you remember something you used to wear round your neck? and he said—I cannot give you exact words—‘that old comforter that you used to laugh at me about, I suppose you mean,’ or ‘was it that old comforter I used to wear.’ It is a fact that when he joined he had an old white comforter he used to put on and wear when he went out hunting, and we did laugh at him about it. *Q.* What next?—I said, ‘I do not mean that; I remember what you are speaking of, but I do not mean that, I mean something that you always wore’—I might have said day and night—I am not quite sure whether I said he wore it day and night, but I rather think I did. Then he said, ‘Oh, you mean’—I think he said—‘my Sacred Heart.’ I am not quite sure of the expression he made use of; I think he said, ‘my Sacred Heart.’ That was what I was referring to, that I had seen on him when nearly undressed; something suspended from his neck like a locket. I did not know what it was; something we knew—or that I knew, at least—that he wore constantly. I imagined it was a relic connected with his religion. I did not ask him any more about it.” Then he says he asked him about the different quarters of the regiment, which the defendant answered correctly; but he says, very properly, “I attached but little importance to his answers in that matter.” Then he asked him about the quarters where particular officers had been; and he answered that correctly, with one exception as to Captain Sawyer. The witness appears to have attached a great deal of importance to the defendant having mentioned Clonmel among the different places where he had been quartered; for, says Major Norbury, “I did not remember we had a troop quartered in Clonmel; but when I came to look into it afterwards I found he was right, and that my memory was wrong about it.” I do not suppose Colonel Norbury would have attributed quite so much importance to that if he had known that the defendant had the statement from the Horse Guards about those different things in the paper that was furnished him. Then he asks him a question, which certainly seems to show that the defendant had a recollection of one thing that used to take place at Dublin. “I asked him what he used to give

us at his rooms when he joined at Dublin, and he replied, after a little thought, soon, not quite immediately, ‘punch.’ Dr. KENEALY: Did he say of what nation?—No, I do not think he did; he said, ‘punch’—we used to call it French punch. Q. What was it made of?—I asked him that question. I said, ‘How did you make it?’ and he described the process. The LORD CHIEF JUSTICE: What did he say? Dr. KENEALY: Tell us what it was made of, because I should like to know the secret?—It is very simple: he used to get a bottle of brandy. The LORD CHIEF JUSTICE: Is this what he told you?—He described it correctly; I cannot say the exact words. He described the process, which was to pour a bottle of brandy into a bowl, set it on fire, let it burn for a considerable time, until a good deal of the spirit was consumed, and then the remainder was the punch. I think, as far as I recollect, that was the way he described it. As far as I remember his words would be—I cannot say whether he mentioned ‘bowl’—‘I used to burn brandy in a bowl.’ I think he mentioned ‘bowl.’ I cannot recollect exactly, but he described the process to my mind correctly.” That is a striking circumstance, because one does not see how anybody would be likely to put that into his head, or remind him of the punch and the way in which he used to make it. Still it may have happened. Then Dr. KENEALY says, “Do you remember anything else you cross-examined him upon?—I asked him—I did not mean to put it as a test question to him, but this was later in the conversation, when I had become pretty well convinced of his identity—I asked him to come over to my house the next day. I said to him—I forget what words I used—‘You remember my wife,’ or, ‘You remember Mrs. Norbury in Dublin?’ He said, ‘No, I do not.’ I did not put it to him as a catch question. I was not married in Dublin, but I thought he might have known who I married, and have remembered the lady. He said, ‘No, I do not remember at all: You were not married at Dublin?’ I said, ‘No, I was not married at Dublin, but I thought you might have remembered the lady I did marry.’ It struck me he rather seemed agitated as if I might have been married, and he had forgotten it. It made an impression on my mind. Q. In point of fact you were not married?—Not in Dublin. I forget whether I said, ‘Do you remember my wife, you must have known,’ or, ‘did you know Mrs. Norbury in Dublin,’ or, ‘my wife in Dublin.’ She was in Dublin in those days as an unmarried lady. He said, ‘No, no, I do not remember.’ He said afterwards, ‘You frightened me; I thought you were going to say you were married in Dublin.’ He said, ‘You frightened me,’ or ‘startled me.’ Q. He said he was startled, that he thought you were going to say you were married at Dublin?—So I understood him to say; that he was frightened at my having mentioned my wife as being at Dublin. Q. Do you remem-

ber anything else before you parted with him that day?—I do not remember anything particular in answer to questions of mine. He told me a great number of things himself, without being questioned, but I did not pay particular attention to those, because I thought he might have learnt them from other parties. *Q.* They made no impression on you?—Not much impression. The impression he made on me was by the answers he made to the questions I put to him. He told me a number of things that were correct, and some things that I had no knowledge of. He told me he believed I was one of the people who put the donkey in his bed. The LORD CHIEF JUSTICE: He said you were one of the people?—He charged me with it. Up to that time I had never heard of the donkey. It made no impression on my mind, because I had never heard about the donkey, at least I had no recollection about it. *Q.* You had nothing to do with the donkey?—Not to my recollection; I think I must have remembered it if I had. It rather created an unfavourable impression on my mind as to his identity, because I had never heard of the affair of the donkey. At least if I had, I had forgotten it. *Q.* What was the impression on your mind as to who he was?—At the end of that interview I had no doubt in my own mind that he was Roger Tichborne; before the end of the interview I was convinced he was Roger Tichborne.” Then he is asked, “Personally in what way did he bring back Roger Charles Tichborne, in his personal appearance?” and he says, “I looked at him for a long time, and I endeavoured to call back the appearance of Roger Tichborne, and I thought that there was a great similarity in this man’s general features, taking them all together, though there was a great difference in his person, in his bulk; but I thought particularly what I call the expression of his countenance was extremely alike. *Q.* Could you point out the features you remembered him by?—I do not think at this time; it is difficult for me to say. I have seen photographs and things since, and they rather confuse my mind. As far as I recollect, at the first trial my impression of Roger Tichborne was more derived from the general expression of his countenance.” Asked about the colour of Roger Tichborne’s hair, the witness says he is colour blind, and could not speak to the colour of the hair and things of that sort, but he says there was that about his eyes which brought back the remembrance. Dr. Kenealy says: “What was there about his eyes that brought it back?—The general expression of the eyes, the expression of the countenance. I recollect that Roger Tichborne had a peculiarity, a movement about the eyebrow, but I am not prepared to say that at that time I exactly recollected what the peculiarity was; I remembered there was a peculiarity.” Then I asked him the following questions: “Do you remember it now?—To the best of my belief, I do; it is very hard to say what



one remembers. I remembered that there was a peculiarity, but I think if I had been asked to describe it at that time I should have had a difficulty in doing so. *Q.* Does that difficulty still exist, or can you describe it now?—I can describe what I think it was. I can describe it now, since it has been brought more to my recollection as——

*Q.* Let me ask you first how has it been brought to your recollection, by hearing other people talk of it?—I think so; I remembered that there was a peculiarity; but I think if I had not heard it talked of by other people, that I could not have described it.

*Q.* Let me ask you this. Has the talking about it by other people had the effect of bringing it back to your recollection as matter of your own memory, and not of theirs?—To the best of my belief, it has.

*Q.* Then it is fair to state it: I do not see any objection to your doing so.—I have conversed with other people about it.

*Q.* If your conversing with other people brings it back to your own mind, as matter of personal recollection, then you are entitled to give it?—Then I should describe it as a sort of raising of, or working of, the front part of his forehead. I should not call it a twitch exactly, making wrinkles——

*Q.* Raising the eyebrows, as I understand, and not wrinkling the forehead?—Yes.” Then he says the defendant’s forehead is like Roger’s, and his hair is of a similar colour.

That is rather inconsistent with what he said before, that he was colour blind. Then he says that the defendant, after he told him he recognized him as the man, seemed more at ease with him, and conversed with him freely. He says “he thought his manner reminded him very strongly of that of Roger Tichborne; he considered his voice like Roger Tichborne’s voice.”

He says “Roger Tichborne spoke broken English, and did not improve much to the very last.” Then Dr. Kenealy says, “Could you find in this conversation you had with him, or in any subsequent conversation, any trace of the old French accent in him?—I fancied perhaps in one or two words, but hardly a trace.”

*Q.* I use the word ‘trace’ advisedly?—There was the slightest possible trace. **THE LORD CHIEF JUSTICE:** Did you find a trace?—I think I did in one or two words.

*Q.* Do you know what the words were at all?—It was a very slight trace indeed. **DR. KENEALY:** Still, however slight, it was there, you think?—Yes, certainly; not more than one or two words.”

Then I say, “It would be rather desirable to know what these words were, if you can remember them?—I cannot. **DR. KENEALY:** Were you looking for it, or did it come accidentally?—I asked him about his French. I said ‘You used to speak French; do you speak it now?’

**THE LORD CHIEF JUSTICE:** What was the answer?—I am not quite certain whether he said, ‘I have forgotten French,’ but he gave me to understand (I cannot exactly repeat his words), that he had almost forgotten French, and that he spoke it badly, and that therefore he had been advised not to speak it at all. I cannot say that those were his

words, but that is what I understood from him." On the trial the defendant distinctly stated that he had forgotten every trace of French, even to the letters of the alphabet.

Colonel Norbury mentions the further circumstance of the recognition of Steptoe, an old military servant of his, and who had been in the regiment for a long time. Steptoe had been directed to come into Malvern on the colonel's pony. This direction had been given to him in the presence of Cairns, and Cairns knew perfectly well that Steptoe was coming. As Steptoe was coming round the corner on a pony, the defendant and the colonel were looking out of the window. I do not know whether the colonel made some suggestion or not, but the defendant said, "Oh, that is Steptoe." Colonel Norbury further says that the defendant mentioned a lady who was residing at Cahir, whom he mentioned as a sister of Mrs. Custance, and he mentioned that, in order to satisfy the colonel he had been at Cahir. Then the colonel says he asked him a question about going to Howth. He says, "I remembered a story about his going to Howth in a boat and coming to some trouble, and I asked him in this way. I said, 'Do you remember Howth?'—'Yes,' he said, 'I remember Howth.' 'Do you remember going there?'—Yes, several times. The LORD CHIEF JUSTICE: 'Several times?'—Yes, to the best of my belief. I asked, 'How did you go?' I think he replied, 'sometimes by train, sometimes by road.' I think he replied so. Then with the recollection of this story about the boat in my mind, I did not like to mention the word 'boat' to him, or to say 'did you ever go into a boat?' so I said, 'Was that the way you generally went?' The idea in my mind was to find out whether he knew this story about the boat without my mentioning the word 'boat,' and he did not mention that he had been in a boat. Then I asked him as to a trick Roger Tichborne had of sticking pins in the calf of his leg. And on the same principle of not letting him know what I had in my own mind, I said to him, 'Do you remember the trick you used to do with your leg?' not mentioning the word 'pin.' I cannot at all remember how I worded the question, but that is what I wanted to find out. Q. What did he say?—He did not know what I alluded to; he did not mention the incident. I did not say a word about a pin, and he did not say a word about a pin. Q. That is, you avoided giving him a hint, in order to test him?—I could not well put the question further without mentioning the word. Q. Is there another instance you can give us of a question you put to him which he was unable to answer?—I have no doubt there were more questions than that that he was unable to answer, but I cannot at this moment remember them. Q. Are you quite sure there is no other you can remember? Just tax your memory a moment.—I asked him about some tricks we played him once or twice when we were out in what we call marching order, going out into the country in heavy marching order. His answer

was, 'you used to make my horse jump and fidget about.' We did make his horse jump and fidget about, but what I alluded to was, that on one or two occasions we got his crupper away from him, and his valise, by riding one man on one side, and one on the other; one would unbuckle one strap of the crupper and the other the other, and then slip it off; the same way with the valise, and he would come back to barracks minus the crupper and valise. Q. That he did not answer?—No, he did not mention it, and I did not mention it either."

There can be no doubt whatever that Colonel Norbury gave us a truthful account of what passed, and that his belief in the identity of the defendant, as resulting from that interview, was perfectly honest and genuine; but that an attempt had been made to lead him to a favourable view of the defendant before he saw him, I think cannot be doubted, from the fact that Mr. Holmes had taken care to send Serjeant Cairns down there, and had so arranged as that Cairns should have a quiet conversation with the colonel before the latter saw the defendant. Cairns, on his cross-examination, admits that he went to Malvern with the defendant and Carter after he had been staying at Alresford for several days free of expense; and as I told you, he was sent to fetch Major Norbury, Carter being put on the box of the fly; and he writes two letters which show the sort of way in which these people, Carter, Rous, and the rest of them, were in the habit of dealing with persons who were intended to be made witnesses if possible. "Malvern, 6 p.m. Mr. Rous I am very happy to inform you that I went to Major Norbury's at 12.30 this day and brought Major Norbury back with me to the Foley Arms Hotel to have an interview with Sir Roger and while I am writing this the interview is still going on which is nearly 3 hours. during the same time Major Norbury's servant came on a pony to see me and Major Norbury had his servant in front of Sir Roger and himself and the servant is quite satisfied that Sir Roger is the same gentleman that was in the 6th Dn. Guards, but I do not know the result of Major Norburys interview but I think satisfactory I am writing before post and Major Norbury is still with Sir Roger excuse this I will write again to-morrow giving you more information." The second letter is this. "Great Malvern 4 p.m. Mr. Rous, I am proud to inform you that the interview between Major Norbury and Sir Roger has been highly satisfactory which I am proud to say. Major Norbury is a very strange man, but the conversation we had together in the trap had great effect. We leave to-morrow back to Gloucester and from thence to Cirencester to have an interview with Captain Sherston which I know will be right after I speak a few words with him." In addition to which he says, "Mr. Holmes's chief clerk was here last evening to take Major Norbury's and servant's affidavits which



was first class." He says, as before, that the reason why he was taken down was that he had expressed a wish to see, not Colonel Norbury, but Colonel Norbury's servant, Steptoe, who also saw the defendant on that occasion and said he recognized him directly by his walk, Steptoe being an old friend of Cairns; but the use made of Cairns is not only to see Steptoe, but to fetch Colonel Norbury, and to have this conversation in the fly with the colonel, which Cairns is candid enough to say afterwards did a great deal towards convincing the major, or preparing him to accept the defendant as Roger. The same thing as was here practised on Colonel Norbury was practised on many other witnesses before they were brought into communication with the defendant, and, as usual, Colonel Norbury was supplied with the affidavits which were prepared and printed. At the same time Colonel Norbury was a competent witness, and seems to have taken pains to get at the truth, and his evidence makes in favour of the defendant as exhibiting knowledge which the real Roger Tichborne would have possessed. Whether this was the genuine production of the defendant's memory, or whether we must seek the solution in other circumstances, although they may not have been fully brought to light, is matter which, upon a review of the whole case, it will be entirely for you to consider hereafter.

Next comes Captain Cunliffe, who was also in the regiment, having joined the Carabineers in 1850 at Cahir, after Roger Tichborne had become a lieutenant; therefore it must have been after the 22nd of November; but he says Roger was still both at horse and foot drill. Captain Cunliffe spoke French, and this brought them together; they were intimate, and lent one another French books, and read the same description of books. He describes Roger Tichborne, and makes him to have been five feet nine inches and a half, which I believe was above, though not much above, his height. "What do you say as to his shoulders?—I should say he was broad in the shoulders. Q. And his chest?—Rather hollow. The LORD CHIEF JUSTICE: What do you mean by that?—He did not fill up his coat, my Lord. Dr. KENEALY: He required a good deal of padding?—They always put padding in military coats. The LORD CHIEF JUSTICE: Some people want more than others?—Yes, my Lord, a great deal. Dr. KENEALY: I shall not ask him about being pigeon-breasted, my Lord, after what your Lordship has said. The LORD CHIEF JUSTICE: You might ask him this—was he wide across the chest in proportion to his height, or was he what you would call a narrow-chested man? The WITNESS: No, I should not call him a narrow-chested man, but a hollow-chested man. If you took hold of his coat like this (describing) there was nothing there. It is difficult to describe, but I dare say you know what I mean. Q. You mean if you took hold of him there was a want of chest?—There

was a want of chest." Now, then, about his eyebrows and the twitch.

"What sort of a forehead had he?—A good forehead. Q. And his eyebrows and eye, what should you say to them?—The eyebrows were rather thick than otherwise. Q. Do you remember whether his eyebrows were straight or arched?—I cannot quite say. Q. Were they thick or thin?—Thickish. Q. And had he any habit about his eyebrows that you remember?—He had a way of twitching his forehead and the scalp, not the eyes. Q. What should you say as to the part immediately above the eyes, the brow? Was that included in the movement or not?—Yes, it moved the hair. When he twitched, it was a nervous, strong twitch that moved the whole scalp. Q. You say it did not move the eye?—I never observed the eye. Q. Did it move the part above the eye?—Above the eye. Q. The eyebrow?—The hair used to move with it, and the scalp with it too. Q. You do not attend to the question. The eye, you say, was not, as far as you recollect, moved?—No, it was not. Q. Was the part which is immediately above the eye moved, the eyebrow?—Yes, the whole of the forehead upwards. Q. Including the eyebrow?—Yes, including the eyebrow. Q. Do you remember his eyes? I do not mean as to colour. How would you describe his eyes? Some persons have sunken eyes, and some prominent eyes, and some neither one nor the other: how would you describe them?—There was nothing remarkable about them; they were the best feature in his face. Q. You cannot give us any more distinct description of them than that?—They were what I should call a pensive sort of eye; he had a sort of dreamy look about the eye. Q. Have you seen him go off into a sort of pensiveness and dreaminess?—Very often. Q. At that time have you noticed the twitching?—Yes. Mr. JUSTICE MELLOR: When he got into the pensive state?—When he got into a sort of dreamy state, then the twitching would come on. Q. Not when he was talking?—No, chiefly when he was silent." That certainly does not agree with what the other witnesses have said. "Q. Did you not notice it at all when he was speaking?—He did it very frequently. Q. What, when he was speaking?—When he was speaking and when he was silent. Dr. KENEALY: He used to do it, as I understand you, when he was in one of those dreamy moods as well as when he was quiet?—Chiefly. The LORD CHIEF JUSTICE: Chiefly in what?—Chiefly when he was in the dreamy mood. Dr. KENEALY: Chiefly when he was in the dreamy mood, but you have seen him do it when he was speaking?—Both." He says Roger had a thorough knowledge of the French language, that is to say, in speaking it, and he could read it perfectly; we know his grammatical knowledge of it was very defective. On the witness being asked on cross-examination when he first saw the defen-

dant to speak to him, it turned out he only saw him on the day he gave his evidence, at the time of the adjournment. “*Q.* There is no trace of a French accent now, is there?—No. *Q.* As far as regards your friend Roger Tichborne, whom you knew in the Carabineers, he spoke with a strong French accent down to the time he left, did he not?—It was more broken English than French accent. The LORD CHIEF JUSTICE : Did he speak broken English to the last?—Always. Mr. SERJT. PARRY : Had the Roger Tichborne you knew a peculiarly long, narrow head?—Yes, narrow, flat at the sides.” Then Dr. Kenealy, in re-examination, says, “ You have been asked about his trace of French accent ; how long were you speaking to him to-day during the adjournment?—A quarter of an hour. *Q.* Did you discover any trace at all of the French accent?—No, I could not perceive it. *Q.* Did you look for it?—I did ; but I could discover none. *Q.* You have been asked and you say that he always spoke broken English ; do I understand by that ungrammatical English?—It was as if he thought in French and then put the words into English. *Q.* Translating French idioms now and then literally into English?—That is it.” Captain Cunliffe is, I think, the only officer, and, indeed, the only witness among the Carabineers, who states that Roger Tichborne ever indulged in wine or stimulants to a sufficient extent to show it. Three or four witnesses, Captain Maunders, Major Kellett, and others, say they never saw him drunk. This gentleman says that some part of the time he saw him he was in the habit of taking so much wine at dinner that he got into a “soaked” state, and after dinner became confused in his ideas, although the next day the thing had passed away, and he never showed the least trace of it the next morning. It is to be observed, however, that this was when Tichborne was at Cahir, and therefore before the time when he professed to have reformed in the matter of wine. Captain Cunliffe is no doubt a very competent witness. He was intimate with Roger during the time they were at Cahir together. They read the same books, and lent one another books, and they were on terms of considerable intimacy. But he never, at any time, went to have a conversation with the defendant, in order to test him, and only saw him the same day that his examination in court took place, so that he had no opportunity of referring to any matter which occurred when Roger Tichborne was in the regiment. Therefore his evidence does not carry the same weight with it as that of Colonel Norbury.

These are the only two officers of the Carabineers who have come forward on this trial to speak of the identity of the defendant with Roger Tichborne, their former brother officer. I am bound to observe that I miss names that the defendant refers to in the course of his correspondence, and names of individuals who, he says, made affidavits on his behalf on the former occasion, and I must point that



out, because it was an assertion of the learned counsel for the defendant that no one had fallen off from him, with the single exception of Colonel Custance, who was examined on the former trial, and who has not appeared on this. But Colonel Custance is not the only one. Captain Sherston is not here, Colonel Sawyer is not here, both of whom made affidavits in favour of the defendant; both of whom were called on his behalf on the former occasion. They, of course, have read the examination and cross-examination of the defendant on the former trial; they are not here now, and their absence is not accounted for.

The FOREMAN: Is Major Haywood alive?

The LORD CHIEF JUSTICE: I believe so. I have not heard that he is dead. He is another officer who made an affidavit before he heard the last trial, and who does not now come forward. While I am on this subject I must remark that the statement of the learned counsel was the less warranted by reason that there are two or three gentlemen who are in the same predicament. There is Sir Talbot Constable. What is the explanation of Sir Talbot Constable's absence. The learned counsel says it is because there was an intention of attacking him in some way with regard to his wife. Mr. Hawkins repudiated that in the strongest terms, and I am quite sure spoke the truth. There is nothing, as far as we are aware, on which he could be in the slightest degree assailed, and if there were, it would be a scandalous thing to make a gentleman's domestic relations the subject of remark, because he comes forward to give an opinion on a matter of this kind. I am sure Mr. Hawkins would never have thought of doing anything so discreditable, even if there had been an opportunity of doing so; I do not believe anything of the kind; and you may believe in Mr. Hawkins' perfect sincerity with regard to it.

Then there are Mr. and Mrs. Marx, who before were strong supporters of the defendant, but who have not been called. The learned counsel had, therefore, no right to say that no one had fallen off, when we find so many witnesses examined on the former occasion, to whom money could not be the slightest object—persons who, if there had been any difficulty in paying their railway fare, would have paid it themselves, in order to have justice done—and who are absent on this occasion.

However, there is a strong body of evidence of the non-commissioned officers and privates of the Carabineers. I think they are fifty-eight in number, and they all agree in certain main things, and I should be really abusing your patience and wasting your time if I went *seriatim*, one by one, through the evidence of all these witnesses, as to matters upon which they are all agreed. Therefore, I shall

take them in the mass as regards these general points, and only call your attention specially to those witnesses who speak to facts or conversations, by which the knowledge of the defendant as to things connected with Roger Tichborne was sought to be established. And first as to the points on which they are all agreed.

All these witnesses, having known Roger Tichborne when in the regiment, concur in asserting that the defendant is Roger Tichborne. They are all agreed that he was a slim, slight man. One says he was slim, another says very slight, others thin ; thin and slim ; very thin. They are all agreed about his height—5 feet 8 or 5 feet 9 inches ; they are all agreed as to the colour of his hair. They are all agreed he was a man of sallow complexion ; they are all agreed he was a man with brown hair ; some say dark brown, some say brown ; but on the whole, the preponderance is in favour of his being a man with dark brown hair ; and they agree also that it was not curly, but straight hair. One or two who evidently had no recollection of it, say the hair was light brown. One goes the extent of saying “lightish brown,” and a witness of the name of Ratcliffe says “it seems a shade lighter now.” All the rest of them agree in saying it was dark brown, and much like the defendant’s hair.

They are agreed, with certain differences of expression, as to the twitch about the eyebrows ; and they are agreed that there was something peculiar about the right knee ; that either it was the natural conformation of the leg, or that in walking it exhibited itself in the shape of his being in-kneed. One says, “he was in-kneed ;” another, that “the right knee turned in a little ;” another, that “one knee hit against the other ;” another, “that the right knee turned in very much ;” another says, “it turned in rather ;” another says, “the right knee turned in like a Frenchman ;” another says, “the right knee bent in ;” another, that “the right leg inclined to turn in ;” another goes further, and says, “he was not only in-kneed, but knock-kneed.” They are not all agreed as to its being the right knee, but the mass of them are. One man says, “the left leg turned in and always caught the sabretache ;” another says, he was “in-kneed and turned the left foot out ;” another says, “both legs were in-kneed, and they looked as if they were not made for the body.” Some of them ascribe it to the same cause as the witnesses for the prosecution, namely, to weakness—the same cause as some of the witnesses from Wapping assign for the similar appearance for the walk of Arthur Orton. Thus, Andrew McEleney says, “he had a weakness in the right knee—he used to walk as if he was weak ;” and Edward Horny Crook says, “I fancied there was rather a weakness in the left knee when I saw him walking.” Mr. Greenwood, the regimental tailor, says, in his examination-in-chief, “His legs would appear to be as if they were weak, or disproportionate from the upper part of the body ;”

and in his cross-examination, "both legs inclined to be weak." It is unnecessary to go through the details; they are all agreed that there was something in the knee or in the conformation of the leg or bending in as he walked.

Then, as to the voice, they are all pretty well agreed. They say it was a soft, mild voice. One witness said, "more like a lady's voice than a man's;" another said, "a mild, clear voice, rather weak;" another says, "a soft voice;" then another says, "neither coarse nor soft;" then we get another who says it was coarse; but that man makes a very curious and inconsistent answer in another respect, because he says, "it was coarse, like a woman's." That is the first time I ever heard that expression.

With regard to his hands and feet, they are agreed that they were small. One says very small. Of the value of this evidence you will be better able to judge by-and-by, as we have Roger's actual measurement as taken by his bootmaker.

With regard to the twitching, they do not all agree in the language they use, though they may do so in the substance of the thing. Barry says it was when speaking. Hamlet says it was when speaking. Carroll says it was in the eyebrows when he was talking. Moody says it was great when talking, "especially when he was excited." Robinson says it was in the eyebrows very much when speaking. Marks says it was a "lowering of the eyebrows; an uneasy sort of winking with the eyes." Richmond says it was in the right eye when speaking. Dunn says it was in the forehead; "winking the eyes." Another man (Try) says it was in eyes and eyebrows. Manton says "he moved his eyebrows frequently, that is to say, the skin of the forehead." Another man says he saw it occasionally. Mather says it was in one eye, especially when he was put out, "above and below the eye, especially the upper part of the brow." Gall says it was in the right eye more than the other. Lessweare says it was in the right eye. Ann Lessweare says it "was in the eye and eyebrows; a blinking of the left eye." Another man says he "blinked one eye;" another calls it "the rise and fall of the brow." Ratcliffe says it was "a wink in the eye when speaking." Adams says it was in the right eye when speaking. Marks says he "winked when speaking—moved the eyebrows up and down quick." Another calls it "winking with the right eye."

They all agreed he had a large heavy eyebrow, and that his eyebrows were thick and bushy. Mathers says his eyebrows were very big and projecting—overhanging. They are all agreed they were large, and all substantially agree they were heavy.

With regard to the accent, in like manner they are all agreed that he had a French accent, and spoke English imperfectly. Robinson says he was "more French than English." Broadhurst says he was



just as bad when he left as when he came. Manton says he was always foreign; while another says he was improved before he left; there is a long succession of them, who all agree there was a marked foreign accent, and that it used to occasion some amusement to the men to hear an officer pronounce the word of command he had to give with the accent he used.

Then, whereas we have been told by the witnesses for the prosecution, the members of his family and his brother officers, that Roger Tichborne had sloping shoulders and a narrow chest, here we have quite a different statement on the part of these witnesses. They all seem to say he was a broad-shouldered man. Some say he had "broad shoulders;" some say "square shoulders;" some "broad and rather inclined to be high;" some "fair;" some "inclined to be broad;" some "moderate, not sloping;" some "pretty good;" "fair;" "square;" "broad;" "wide." Another man says "he was slightly made, but his shoulders were square." So that the whole of these witnesses make out that the slim, narrow Roger Tichborne, as described by his relations and friends and the officers who were called, had, in fact, fair, broad, square shoulders, in proportion to his size. In like manner, with regard to his chest, we have been told his chest was a narrow chest, but these witnesses tell a very different story. They say he had a fair chest; a manly chest, and was not pigeon-breasted. Some say it was a flat, but not a narrow chest; a good, fair chest, though rather flat; some say broad; some say fair, neither flat nor broad; some say very good, "the same as any other man's;" and then comes the regimental tailor, who says he was thirty-six or thirty-seven inches round the chest. That is the account they give of this man, which certainly would make Roger Tichborne out to be a much stouter man, as regards shoulders and chest, than the witnesses for the prosecution have asserted him to be. You will have to say which is right; not that that would be conclusive of the matter; because, if we assume (taking the account of Roger Tichborne given by the defendant's witnesses to be the correct one) that Roger Tichborne could ever have expanded into the large man which the defendant now is, I do not see that it would very much matter whether he expanded into his present size from the slight, spare-made man that the witnesses for the prosecution represent Roger Tichborne to have been, or from the somewhat larger and better proportioned man that the witnesses for the defence represent him to have been. At the same time, no doubt, within certain limits, the bigger man Roger Tichborne was at the time these witnesses speak of, the less to a certain degree is the difficulty in supposing he can have become the man the defendant now is.

Now, that being the general description which these witnesses give, and which is supposed to be favourable to the defendant's cause, let

us see what the evidence is which those of them give who have had interviews and conversation with him, as tending to confirm the opinion as to his identity, expressed by this body of witnesses, no less than fifty-eight in number, who all agree in the conviction that the defendant is the Roger Tichborne whom they knew.

First, there is a man of the name of Patrick Barry, who was formerly servant to Major Hay, in the Carabineers, and who, being an officer's servant, was occasionally in the habit of attending as mess-waiter at the mess, so that he had full opportunity of seeing Roger Tichborne when he was dining at the mess. He says he saw the defendant at the Queen's Hotel, at Leeds, in 1868. He recognized the voice, the heavy eyebrows and the twitching, and also the walk. He says the defendant spoke better English, but had a foreign accent—a little, not much. Then they got into conversation. He says, "I asked the defendant who commanded the regiment when Roger Tichborne joined. He said Colonel Jackson. I asked who was second in command. He said Lieutenant-Colonel Hay. I asked who was adjutant of the regiment. He said Mr. Bickerstaffe. I asked who was paymaster? He said Mr. Manders. I asked who was the Regimental Serjeant-Major who drilled Roger Tichborne. The defendant said 'Fraser; he is quarter-master now.' I asked who was riding-master. He said Mr. Phillips, now Major Phillips. I asked who superintended in school. He said Serjeant Cairns and Corporal Waddington. I asked who was Roger Tichborne's servant? He said McCann." Now those are things as to which the defendant might have said "you need not ask me all those questions, I have got all that down: if I did not know it myself I have got it all down upon paper; I have got the regimental papers, and I can answer you all those questions." Then he says, "I asked if he had had other servants. The defendant said Clarke. I asked what happened to Clarke? He said 'he was killed by my horse.' I asked where was Roger Tichborne the night his things were thrown out of the window, and he said at a ball at Clonmel." The first thing, namely, about Clarke being killed, was a thing that was repeated over and over again. It was a thing that the defendant perfectly well knew, whether he was Roger Tichborne or not. According to Gosford he knew nothing of it when they met at Gravesend on the defendant's first arrival. But I do not know about the things being thrown out of the window at Clonmel; that might be a question put to him which, if he had not been Roger Tichborne, he might not have been in a position to answer. Then he says, "The answers did not so strongly impress me as the features and the voice." And being further pressed, the witness says that the answer about the accident to Clarke made an impression on his mind, and, together with his features, made him believe that the defendant was Roger Tichborne.

He says he occasionally noticed the French and foreign accent in the defendant. He was shown the daguerreotypes, and said they do not resemble Roger Tichborne in the slightest. He has not the slightest doubt that the defendant is Roger Tichborne. The interview took place in February, 1868.

Arnold Hamlet is, I think, an important witness. He says, Roger Tichborne first joined Captain Morton's troop. He remembers Roger Tichborne joining the troop in Portobello in 1849, and says he continued in it until he left. He is in error; however, such mistakes are not unlikely to be made. Roger joined, as we know, Captain Jocelyn's and not Captain Morton's troop. This witness saw the defendant at Liverpool in April, 1868. He received a letter from Mr. Baigent early in the month of February, and then a second letter a few weeks afterwards, saying that the defendant would be down on a certain day, the 3rd of April. He saw him on that day. He says, "I met Mr. Baigent at the top of the stairs of the hotel at Liverpool. I said, 'I am Serjeant-Major Hamlet, the person you wrote to from Moss Bank.' He said, 'You have come down to see Sir Roger, I suppose.' I said, 'Yes, I have;,' so he opened the door of a room and I walked in. John Lessweare was there, his wife, and the defendant. The defendant got up to shake hands with me, and wished me good morning. I could not recognize him for a few moments after I got into his company; I failed to do so, because he had got so very stout. His voice brought it to my recollection that it was him. The voice was stronger than it was before. He spoke better English than he did before, as regards accent. I talked to him about half or three-quarters of an hour. His walk was similar to when he used to be in the regiment—one knee bending in rather more than the other. The first thing I asked him was, if ever anything had happened to a servant of his in the regiment, and he said 'yes, he had once a servant killed.'" Thus, you see, the same thing does duty on a variety of occasions. "He described the man by his name, Larkin—I have made a mistake, it was Clarke. I knew Clarke; he was a private in my troop. I asked the defendant if he remembered anything happening when he once returned from chapel. He said, 'Yes.' I said, 'Can you tell me what it was, if you please?' He said he once confined a man for being drunk. I said, could you tell me his name? He said his name was Larkin. A man named Fenton was confined for being drunk in addition to Larkin, but I am not certain whether it was in Cahir or not. It was not on the same occasion, but a similar crime committed on some other occasion."—This man Larkin's name comes up on two or three occasions—"I believe we mentioned Colonel Custance and Captain Morton in the course of conversation; I made no note of the conversation." Then he is cross-examined as to the letters of Mr. Baigent, but they amount to



nothing. Then he is asked about the voice, and he says, "When I heard the defendant speak I looked at his features and eyes, and began to recognize him again. It was the voice, after I began to converse with him, and not what he told me, that produced in my mind a conviction. The tone of the voice was Roger Tichborne's. I noticed there was a little French accent, but not what there was when he was in the regiment. Occasionally I could catch a word with a little French accent. His voice was a little stronger or coarser, I thought, from being more fleshy than he was in the regiment. I did not consider it thick and husky at all. I was with him twenty minutes in the afternoon. My affidavit states I was several hours with him." That is not true, and he says it was a mistake on his part. He seems to have sent up his name to Mr. Baigent, and there is no wonder he was known.

Frederick Mather, who was born in France, and is now interpreter at the London, Chatham, and Dover Railway, and stationed at Dover, says, "I remember Roger Tichborne very well, and there he is." He then gives a description of Roger Tichborne, and speaks of a good-natured act Tichborne did for him and some of his comrades, ten or twelve of them, when they returned late to barracks at Canterbury, and were confined for it—Roger came and released them. He says he saw the defendant in Leeds in February, 1868. He says, "A gentleman came to me and asked if I had been in the Carabineers, and I said I had served twelve years in the regiment. It was Mr. Baigent. He asked me to mention the names of the officers in the Carabineers, and I named them all, and Lieutenant Tichborne among them. Having begun the conversation in that way, he asked if I could recognize Roger Tichborne if I was to see him, and I said I thought I could. Then he asked me to go up to the 'Queen's Hotel,' and see if I could identify anybody, and I went. I was shown into a room where there were three gentlemen, and at first I could not identify him on account of his being grown so stout. I did not expect to see him so stout. I spoke to him in French; he answered me in English. He asked me to speak in English. I asked him how it was he had forgotten the French language. I began by speaking French. He said, 'Speak English, so that these gentlemen can understand what you say. I have entirely forgotten my French.' I asked him if he remembered any circumstance occurring in the regiment. He said he remembered several, and he brought to my mind a case that did occur, that I had entirely forgotten. He said Serjeant-Major Quin had reported me for having a dirty sword. I said, relate it; and he said, 'I told you to go and fetch your sword, and you did so.'" Then he says, "I had told Lieutenant Tichborne in French (at the time of the occurrence) that it was not my sword—that the sword belonged to another man—and he told me to go

upstairs and fetch my sword down. Quin was very angry with me for speaking to Tichborne in French, and because he had made a mistake and I got off without being punished. I never saw Quin after he left the regiment at Hounslow. He is dead. After five minutes' conversation with defendant, I recognized him by the upper part of his face, and by the tone. He spoke better English; there was a little of the foreign accent in it, not much; not so much as there was at Canterbury. It had altered greatly; he spoke English better; he spoke less with the French accent. Roger used to read the standing orders to the regiment. I asked the defendant to read at Leeds, to see if I could identify the same voice and tone, and I identified the same voice and tone and accent; there was a slight difference; this was on the 1st of February, 1868. I asked him to walk across the room, and he did; and I found that his gait was the same as it was in the Carabineers." On cross-examination he says, "I cannot recollect the names of the men that were released by Roger Tichborne. I do not know the serjeant of the guard who confined us. I had an interview with Mr. Baigent at the station. When I went to see the defendant I went first into the wrong room, then into the right one, where there were two or three besides Lieutenant Tichborne. I said, 'I have come here to identify Roger Tichborne and I cannot see him.' Then the defendant got up and came towards me, and I spoke to him in French, and he answered me in English. I will not swear that at the last trial I did not say that 'I did not recognize so much of the French accent.' When he read there was a slight difference; his conversation and reading are nearly the same, but there was a little more French accent than before. Baigent made my affidavit the same day, about an hour after; I waited while he did it. I was in the room two minutes before Mr. Baigent came. I spoke to the defendant in French the first time, to see if he could answer me, because our conversation was always in French in former times." Now, this witness, you see, not only speaks to the conversation in which he says the defendant knew of a thing which happened to him personally, about his being in trouble from a charge made by the serjeant-major of his having a dirty sword—not having properly cleaned his sword—which he says the defendant recollected, but which possibly may have been suggested to him by some of the people about him when it was known Mather was coming; but there is the further circumstance, that he found in the reading of the defendant as well as in a certain part of the conversation, a French accent. Was that genuine? We have heard nothing about a French accent in Australia. Mr. Gibbes found no French accent in his speaking, and in court nothing was heard of a French accent. Now, I can quite understand that in the course of twelve years, never hearing a word of French spoken, and hearing

simply English and nothing but English, he should have entirely lost the French accent, and have acquired the English pronunciation from the people with whom he was living and associating; but then why should the French accent come back when he is talking with these men who knew him in the Carabineers at a time when it was one of the essential peculiarities of Roger that he spoke English as a Frenchman who had learnt English? Why should the French accent reappear when he is talking to these men? They say it did, and more especially when he was asked to read, and did read. Was it genuine, or was it put on? If it was put on, it is a circumstance which would operate unfavourably to the defendant, because the assuming an accent which did not belong to him, for the purpose of inducing these people to believe in his being the real Roger, would be a fraud; and fraud is always the badge of dishonesty. Of course you must judge for yourselves whether you think it was put on, or whether it was the true intonation of the man's voice in pronouncing the English language.

Then we have Mr. M'Eleney, who was the son of the trumpet-major in the regiment while Roger Tichborne was in it. He remembers Roger Tichborne, and gives evidence in favour of the identity of the defendant. He saw the defendant in Alresford in 1867, at the railway station and at the Swan Inn. He had been invited by Serjeant-Major Marks (who has made himself very busy in this affair, but who, strange to say, has not been called before you) to go down to Alresford from Sandhurst to see the defendant. He asked him if he had learnt any musical instrument in the Carabineers, and the defendant said the French horn. He asked him who taught him, and he answered, "Your father." Then he asked the defendant if he remembered him (the witness) and his brother, and he answered Yes. That, he says, satisfied him; he considered it conclusive. He was asked what was his recollection of Roger Tichborne, and he says it was confined to the upper part of the face and the walk, there being a great similarity in the eyebrows, eyes, and forehead of the defendant. The resemblance which he traced, or thought he could trace, and the statement by the defendant that he had learnt the French horn from his father, was enough to satisfy him that he was the true man.

Then there is a man of the name of William Try, a servant in the College at Sandhurst. He was taken over to see the defendant at Alresford; he was invited to go by Cairns, who made himself exceedingly active, as I have shown you, in going to the officers, Major Heywood, Colonel Norbury, and Captain Sherston. The witness says he saw the defendant and shook hands with him, and knew him directly; recognized the voice; recognized the twitch; and the defendant asked after the witness's wife and family. He



says the walk reminded him of Roger Tichborne, and he asked, by way of a test question, what so many of the regiment asked him, what happened to his servant? The answer of course was, that he was killed in coming from Clonmel to Cahir. He admitted that he had a talk with Carter before seeing the defendant, and that he went to Alresford in a cab with Cairns. He fancied there was something of a French accent in the defendant at Alresford; he heard it every now and then.

Then there is a man of the name of Michael Carroll, who was military servant to Colonel Swinfen, and who was in the same troop as Roger Tichborne. He describes Roger Tichborne as the others do. I will not go over that again. He went to Croydon to see the defendant in December, 1867. He says he did not recognize him at first; he talked to him ten or fifteen minutes before he did. Then he recognized him by the form of the face, the eyebrows, the twitching of the eyes, the walk, and by the conversation. He asked the defendant if he remembered the troop he belonged to; the defendant said the F troop. That was right, he did belong to the F troop. Then he asked him what part of the Portobello Barracks the F troop was put up at, and the defendant said the corner of the back wing. Then he asked how the men were put up. The defendant said in two large rooms, one at each side of the passage. Then he asked how the horses were put up. The defendant said in the stables under the rooms. He asked if all the horses were so put up; the defendant (after some consideration) said there was a detached stable. He asked if he remembered anything particular in that stable, and the defendant said there was a grey horse in that stable. Then the witness explained that there had been a grey horse there, which belonged to the trumpeter Allwright. During the conversation he says he recognized the voice. He afterwards met the defendant at the 'Three Cups' at Colchester. On cross-examination he says the defendant may have read some affidavits to him. This was put to show that these men may have been influenced by the reading of the affidavits of the others. It appears from this man's statement that the defendant recollected the part of the barracks where the Carabineers were put up, and the stables, and the fact of there being a detached stable; and there is his recollection of the particular horse which stood in that stable, and of its colour; all of which was right—a remarkable instance of memory, if genuine, and which might lead us to expect that an equal amount of memory would be shown in other matters.

Martin Burke is another witness. He says he was in the same troop with Roger Tichborne in 1851. He recognizes the defendant by his gait and twitching of the eyebrows, and the answers he gave to the questions he put to him. He asked the defendant, whom he

saw at Bolton in 1868, if he recollected an occurrence happening to him when he was marching the men to church in Cahir. The defendant said he thought he had not got any man into trouble except Robinson. He said with regard to Robinson, that Robinson was asleep on his post, and that, being orderly officer, he so found him. Afterwards he remembered that once, when he was marching the men to church at Cahir, two men got drunk, and one of them, whose name was Larkin, got seven days' imprisonment; the other man I do not think he says anything about. He asked the defendant if he could give any description of the horse he rode at the riding school, and he answered that it was a black horse, with very rough action. He told the witness that Mr. Phillips, the riding-master, cracked many a bottle at his expense. The witness says he did not recognize the defendant until he began to speak about the incidents in the regiment. He did not believe him to be the man until he answered the questions. He went more by the questions put to him and the answers than anything else. At the same time he admits that every man in the regiment knew about the two men getting drunk on coming from church and being punished for it. But he got into a serious difficulty, because he was obliged to admit that this man Robinson, who was punished for being found asleep at his post, was found asleep at his post at Norwich, where the regiment never was in Roger Tichborne's time, and where, therefore, Roger never could have caught the man asleep. But then he explains that by saying he thinks Robinson was caught asleep on his post a second time. He thinks Robinson was found asleep on his post not only at Norwich but at Cahir also, of which, however, we have no evidence whatever, nor did we hear anything of it from the witness till he found himself in this difficulty.

Walter Moodie, warder of the Military Prison at Aldershot, was stationed at Colchester in 1868. He was one of the parties (there were four of them I think) who were desired by Major Swinfen, who commanded the regiment at that time, to go up to the 'Three Cups' at Colchester, and see the defendant, in order to see if they could identify him. He says he was shown into a room, and sat down to read the paper. Somebody came up and tapped him on the shoulder, and then he says, "I turned round quite by surprise, and the person said, 'Hollo, Serjeant Moodie, I know you, but the last time I saw you, you were only assistant-farrier, you were not serjeant then.' I did not know him for a moment. As soon as he talked for a few seconds I got up out of the chair and I says, 'Mr. Tichborne.' I asked him if he remembered anything that happened at Cahir Barracks on Christmas Day. He said he remembered a good many things, but if I could put any particular question to him he might remember it. I asked him if he remembered anything that happened

at Cahir Barracks on Christmas Day. He considered nearly ten minutes before he could remember the circumstances, and then he said, ‘Oh, by the by, Moodie, I remember it now. There were two men went out of chapel and got drunk, and I had to march them home prisoners.’ He remembered the name of one of them very well, but the other he was half an hour before he could remember it. The one he did remember was Larkin; the other was Fenton.” So that this is the same occurrence as was referred to in the conversation with the preceding witnesses, Hamlet and Burke. But according to Hamlet, Fenton was not punished on the same occasion as Larkin. The witness continues: “I asked him the number of my own horse”—Here we have a most remarkable fact—“I asked him the number of my own horse, and after a little hesitation, he said G 23”—meaning, of course, that the horse belonged to the G troop, and was numbered the 23rd horse—“He said G 23, which I found to be correct.” The defendant recollected that from the time he was in the Carabineers, the distance of time being from 1852 to the year 1868—a most prodigious effort of memory, one which very few officers in her Majesty’s service, after fifteen or twenty years’ retirement from the army, would be able, I imagine, to exhibit, namely, the recollecting the precise number of the horse belonging to a particular man. The man himself did not remember it, at least I presume so from his answer, but when he turned to the record which he had of the thing he found the statement was correct. The defendant also said that the horse was a bay horse, and he was right in that. Then, says the witness, “I asked him if he could tell me the names of any of the men or non-commissioned officers. He told me there was one man he knew in the troop especially, namely, Thomas Edwards, the tailor of the troop, and there was one man of the name of Brown, who was called Dandy Tim. I asked him if he remembered who the serjeants of my troop were. He said Serjeant Bullamore. I asked him if he could remember any other horse in the troop.” Then comes another very remarkable instance, “He said there was a black mare in the troop, and I then asked him who belonged to that mare. He hesitated for some moments, and told me the man’s name was Hines. He gave two or three numbers, and considered a good bit as to the number of the mare, but came to the right one at last, G 18.” That is another remarkable instance; although he made two or three attempts before he succeeded, it is a remarkable thing he should have professed to have remembered, and have shown he remembered the name and number, not only of the particular trooper’s horse, but the sex of the horse, and the colour of it. The witness says that Marks, Carroll, and Robinson were there at the same time. “They were all there before me.” He says, “I was more astonished at the defendant’s knowing about my horse than about the black mare. The



number of each horse was branded on the back and afterwards on the hip." I presume while an officer was in the regiment it might be his duty to know the number of the horse belonging to each soldier in the troop. The wonder is in the recollecting the number after so many years; and the observation forces itself upon one that if this exhibition of memory was genuine, the suggestion of the defendant's counsel as to his disordered intellect and shattered memory will not be very likely to be accepted as the truth.

Another of the men the defendant saw at Colchester, in 1868, was William Robinson. He remembered Roger Tichborne very well. In addition to the general description of him, the witness speaks of his knees. He says he was so in-kneed that he was one of the men of whom it is familiarly said that they are cracking nuts with their knees as they go along. No one, I think, can doubt that this must be a very gross exaggeration. He first saw the defendant at the 'Three Cups Hotel,' at Colchester, and identified him as the gentleman who joined in 1849, at Portobello Barracks. "Colonel Swinfen, my commanding officer, had us up in the office about it, which was the reason why I came to go to the 'Three Cups.' He said that a gentleman who used formerly to belong to the Carabineers had come to the 'Three Cups' to see all the old soldiers belonging to the Carabineers. Five of us went—Serjeant Moody, Carroll, Marks, and another, whose name I forget, and myself. We were called in separately, and went in alone. Carroll went into the room first. I went in alone, third, and stayed an hour. There were two other gentlemen"—they were Baigent and Rous—"who took down what we said and put it in the form of an affidavit. As soon as I went into the room he—defendant—told me my name, 'William Robinson.' 'I am,' says I; and he told me what I used to be doing at Portobello Barracks. He asked me whether I knew a gentleman who had joined the Carabineers of the name of Sir Roger Tichborne. I said I did. He said I used to look after a sick horse at Portobello Barracks. I questioned him what part of the barracks it was in, and he told me it was at the gun sheds. I then asked how far they were from the men's stables. He said 400 yards. He told me the colour of the horse and the height—a chesnut, 17½ hands high. I asked him if there were any marks on the horse, and he said there was a white star on his forehead, and he had an off fore white leg, and a near hind one. I asked him how he knew me to look after the horse, and he told me he often used to come round to the stables." The witness explains that this horse had the glanders, and he had charge of him, and was not to allow anybody to come even to the stable door. "I used to order him away from the shed door. I recognised him as Roger Tichborne. I was half-an-hour before I did so, because he was so much stouter. I first recognised him by his speech. When

he was in the regiment he used to talk more like a Frenchman than an Englishman, and move his eyebrows; he used to move the eyebrows very much when he spoke to us. I observed defendant spoke like a Frenchman when I first saw him at Colchester—a little of it, not so much as he had done in the regiment.” Here there is another instance of his recollection of regimental matters when he tells a man that he remembers he had the charge of a particular horse, kept in a particular place, away from the general stables, and that this man, having orders to do so, prevented him from going into the stables where the horse was, because he was not to let anybody go there. But here again it is to be observed that the statement is not made in answer to any question put by the witness; it comes spontaneously from the defendant, who knew beforehand that Robinson was coming, and the fact would be known to others as well as to Roger Tichborne; but this does not appear to have occurred to the witness.

Then there is a man of the name of Moulton, formerly serjeant-major in the Carabineers. He saw the defendant in March, 1868. Mr. Baigent, he says, had written four letters to him, in consequence of which he went down to Croydon. He says, “I saw him at Wellesley Villas. Serjeant-Major McCourt was in the room with him. I did not recognise him for fifteen or twenty minutes, as he was grown so stout. I recognised him then, because on closely examining him I could see the same expression of face, and I could likewise detect something in his voice that I remembered. I mean a half timid expression of the face. That I remember in Roger Tichborne.” Then he says, “The defendant of his own accord read to me two affidavits—those of Serjeant-Major Marks and General Custance. I knew both of them. There was no difference between reading and speaking. The defendant first said to me, ‘Do you know me?’ and I said, no. He said, ‘I do not wish you to say so unless you do.’ I said, ‘No fear of that.’ He said, ‘Sit down and we will have a talk, and probably you will know me,’ or, ‘perhaps you may know me.’ I asked him if he remembered Cahir. He said he did. I asked him if he remembered being at squadron drill in a little field outside Cahir Barracks, and he said yes. I asked him what he remembered it by, and he said he had a fall from his horse at squadron drill on that occasion. That was quite correct. He said the horse ran away, and shook the bridle off, and threw him on the field.” According to the evidence of other witnesses Roger Tichborne was not thrown on this occasion, but was carried by the horse into the barrack-yard, where, after leaping over a child without hurting it, the horse stopped. “I saw him again once in Victoria Street, for about three minutes, when I asked him one question, whether he knew a man in the regiment of the name of Dempsey—he went by that name, but

his name was Burke. The question about Dempsey was put just before the last trial. I put the question to him, and he said he was tired, and that put an end to our conversation."

Then, there is John Lessweare, the old trumpet-major, now a tobacconist at Sheffield. He says he first saw the defendant at the Victoria Hotel at Liverpool in April, 1868. "Baigent wrote and asked me to go. I did not recognise the defendant at first. I recognised him after twenty minutes' conversation. By degrees I recognised the features—the forehead, nose, mouth, and the peculiar twitching of right eye." All these things he had known in Roger Tichborne. He puts certain questions to him: "I asked him if he knew the dress I wore, and he answered, 'Scarlet facings, white jacket, gold lace, and epaulettes.' I asked the defendant if he recollected what happened to the barrack master at Clonmel. He answered that his hat and wig blew off, and a young girl ran out of a milliner's shop and picked up the hat and wig, called the barrack master in, made him sit down, and she put it on;" and he added: "The barrack master was so pleased that he married the girl." The defendant also said, "Coming home from the wedding the men turned out, took out the horses, and drew the carriage in with ropes." Then he says, "I asked the defendant what were the French pamphlets that I brought to him repeatedly; he said, 'they came from Paris from my mother.'" The witness afterwards corrects this, and alters the form of his statement; and says "what he asked the defendant was, what those papers were that had postages to pay on them, and the answer was, 'they were French pamphlets sent to him by his mother.'" Then he asked the defendant where it was he (the witness) sent his letters to when absent from Cahir. The witness forgets the answer, but knows it was right, by reference to a book. The old man was the postman in the regiment, and used to collect the letters and distribute them to the different officers; so he came to know that. As regards accent, he says he found no trace of French accent in the defendant. It was plain English. He says that Baigent and Spofforth, who were there, took his statement down before he went in to the defendant—a suspicious mode of proceeding, if the statement is correct. Upon being questioned, on cross-examination, about the story of the barrack master, and as to what he had said about it at the last trial, the witness says he will not say that he did not then say it was the defendant who began the story, and not he who put the question. Questioned about the dress, and what he said at the last trial, he again says in this respect, he cannot say that the defendant did not begin the subject—which, you see, makes all the difference. If you take a man, whose identity is in question, on a matter on which he is not aware that you are going to question him, and he gives the right answer, it may be presumed that the answer is the



genuine reproduction of his own memory: but if he leads the conversation, and himself introduces the particular topic, and brings up the subject in order to show his knowledge, the inference would be rather the other way. The witness admits that both Mr. Baigent and the defendant saw him take out the book with the address in it at this interview; but then he says they were on the other side of the table, and could not see the address. Afterwards he says he made a mistake when he said Spofforth was present when his statement was taken, and that it must have been Holmes. Afterwards he denied that he saw either Baigent or Holmes before seeing the defendant, but adds he is not sure, as his memory is very bad. The truth is the old man was very old and infirm, and had had a good deal of illness, and the probability is, his memory is not what it was. He says when he went into the room the defendant was at first alone, and then he got up and said you are Trumpet-Major Lessweare. That is the end of Lessweare.

Then his wife, Ann Lessweare, was called, and she says she was present at the interview of her husband with the defendant, and she confirms her husband's statement about the story of the barrack master. She says the defendant knew her, and he asked her if she remembered the affair about the barrack master's daughter in Cahir, so that she makes him, and not her husband, begin the conversation and introduce that topic. Before coming into the room, witness passed the defendant on the stairs. He did not recognise her then, but she had her veil down. Before the defendant came into the room Baigent came in and asked if she was Mrs. Lessweare. But she says Baigent did not leave the room again, so that he did not communicate the fact to the defendant.

Henry Raynes, now employed at Chelsea College, is another witness. He was in the F troop, and he remembers Roger Tichborne joining that troop, and he speaks of the incidents that happened on their coming from Dublin to Herne Bay by steamer. The baggage, or the part of the vessel near where the baggage was, caught fire, and they were in great alarm about its being burnt. He says, "Lieutenant Tichborne was on board, and said, 'What is de matter,' with the French accent, and I said, 'Only the baggage a little on fire, sir.' He said, 'Is there any ammunition near?' I said, 'Yes, plenty of ammunition here.' He says, 'Oh, mine Gott, we will all be blowed up!'" That struck me as rather remarkable. A Frenchman would never say "mine Gott," which is not French, but German; however, he may be mistaken in supposing he said "mine Gott;" he may have said "my God." On my making a remark on this, the witness added, "At least that is the words I understood from him, with the French sound he had. I said to Croff, a comrade of mine, 'Look at the Frenchman how frightened he is.'" The evidence is, however, of little importance, as the matter does not appear to have been men-

tioned between the witness and defendant. He says he has a full recollection of him; and he further states: "I saw the defendant in his carriage in Brompton. I saluted him; he pulled up, then I walked over and said that is Mr. Tichborne. He said, 'I have some recollection of you; I cannot call you by name.' I said, my name is Raynes, and he said, 'Raynes of the Carabineers,' I said yes. He said, 'you had another name besides that, a nickname, Alonzo.' I said, you are quite right. He said he was going pigeon-shooting that day; he would like to talk with me to-morrow. I went to Harley Lodge the next day. It may have been in 1869 that I saw him, and I saw him again at Mr. Spofforth's office." Then he gives a description of Roger Tichborne, and says the defendant is like him. "I recognised his voice; it had got a little stronger, and he had lost that foreign accent, with the exception of a little twang I could notice. He had lost the squeak he used to have when he gave the word of command. When he was a little excited and found fault with by the adjutant about things going right or wrong, he did not know what he was doing, and he would squeak out. It was the same voice, but stronger." On cross-examination he says, "Before I saw the defendant at Harley Lodge I met Serjeant McCourt on Ludgate Hill, and had some conversation with him. He was a Carabineer before I joined; he said, 'Hollo, you knew Tichborne that was in our regiment?' I said, 'Perfectly well, I ought to know him, McCourt.' He says 'he has come home'; I said, 'Nonsense, the fellow was drowned.' 'No he was not,' he says, 'I have been and seen him, he is as fat as a bullock. Go and see Holmes, he is the solicitor; you go down to him—but first come and have a glass with me.'" Then, when he has had a glass, he goes to Mr. Holmes, who, he says, showed him a likeness, and asked him if he knew Roger Tichborne. "I said I did not know Roger Tichborne; I knew Mr. Tichborne, who was cornet and lieutenant in the Carabineers. He says, 'Have you any remembrance of his likeness,' bringing out a likeness half-size? I said I can see something about the eyes, but I do not see anything there of Tichborne. I may have had some talk, but very little, with Mr. Holmes of the capers I had in the regiment. I said to Holmes I was Raynes in the 6th Dragoon Guards (the Carabineers). Holmes said, 'Did you know Mr. Tichborne?' I said, 'Yes, I did, when he was along with us. I hear he has come back in England.' I stated to Mr. Holmes several transactions I had with him in his capers through life. I knew Carter and McCann among others in the regiment. What I mean by capers is coming into a stable as officer, looking up at the stable, and saying, this is a dirty saddle, when he did not know a dirty saddle from a clean saddle." This was a very free-spoken gentleman, this Alonzo; I dare say a brave soldier, but whether we can rely on

his evidence is another matter. His statement is a remarkable one. The defendant is going along in his carriage; the witness salutes him; he pulls up and fails to recollect the man's person or name, but on the man mentioning his name he immediately recollects that he had a peculiar nickname in the regiment, and recollects what it was. No doubt, unless the defendant had heard about the man, Raynes, bearing the name of Alonzo, it is a striking fact that he should recollect that. On the other hand, if he had gone through a list of the old Carabineers with Carter, or McCann, or Cairns, the fact that this or that man had a particular nickname would be very likely to be mentioned. Many of these things seem very surprising, yet the solution, if we had the requisite information, might, possibly, be very simple.

William Davies is a man who speaks to another conversation. He was in the Carabineers in the year 1849, and drilled with Roger Tichborne. This is the man who gave the account of the young donkey having been put by some of the officers into Roger Tichborne's bed, and tied down in it, and who told us how Roger, on going up to bed, came running down to him, who was then on duty as sentinel, crying out that the devil was in his bed, and ordering him to come and pull the devil out. You remember the comical account he gave us of Roger and himself marching to do battle with the devil, who turned out, after all, to be nothing but a harmless donkey foal. The witness saw the defendant at the Waterloo Hotel in November, 1871. He says, "I did not recognise him at first; I said he was not Roger Tichborne. Afterwards I recognised the twinkle of the eye. I recognised the voice, but it was stronger, huskier than Roger Tichborne's. I asked the defendant if he could tell who pulled the donkey out of his bed, and he answered, 'I believe I can; his name was William Davies.' I said, 'Then, you are Roger Tichborne or the devil.'"—Of course this story would soon be known in the regiment, and when it was known that Davies was coming to see the defendant would not be unlikely to be mentioned.—"I asked the defendant if he remembered giving me three days' drill; he answered, after thinking ten or fifteen minutes, 'Yes, for rubbing an oiled rag down your horse's legs to make them shine.'" Conceive what an effort of memory this implies, to recollect, after twenty years, having given a particular individual three days' drill for rubbing his horse's legs down with an oiled rag in order to make them shine instead of producing that effect by rubbing them as he ought to have done. He remembers that all this time. If this be true he must have a prodigious memory. The witness further says he afterwards saw the defendant at the Saracen's Head Hotel, at Hanley, in Staffordshire, when he asked him if he



remembered selling him a fighting-cock. There, again, is a remarkable thing, his recollecting the purchase of a fighting-cock from a particular individual so many years before.

Thomas Ratcliffe was in the Carabineers at the time Roger Tichborne was there. He drilled with him side by side. He recollects him, and says defendant is the man. Then, with regard to anything special, he saw the defendant in 1871, at the Waterloo Hotel, in Jermyn Street. He says: "I knew him the moment I got into the room, because I had seen him at Brighton, on the cliff, in November, 1867. I did not know him then at first, but I turned back after and walked by him 100 yards, and came back and looked him in the face until I was perfectly satisfied he was Roger Charles Tichborne." He did not make himself known to him at that time. The witness says, "when I saw him at the Waterloo Hotel, in 1871, Mr. Spofforth was in the room, and he said, 'Which of us is Mr. Tichborne?' I said, I could soon recognise him. I then put some names to him, and asked him did he know Mr. Phillimore, Captain Pinkney, and Captain Norbury, and he gave me every satisfaction. He remembered them all, and gave me his recollection of their features, their size, everything about them. That is the way I tested his memory." Now the defendant had seen Captain Norbury at that time, and I think Captain Pinkney too. But he did not tell that to the witness. He says, "I saw him again in Brighton, when he was down at the meeting, but had no conversation with him." On cross-examination he is asked whether he knew that, before he saw the defendant on the occasion of the last trial, the defendant had been cross-examined about Captain Phillimore—from which we may infer that the defendant knew about Captain Phillimore at the time he saw the witness. Mrs. Phillips tells us that some time before this she had shown the defendant a photograph of Captain Phillimore. Then the witness gives an extraordinary statement, which we have heard from nobody else. He says he saw the officers push Roger Tichborne into the canal at Portobello; and he further says, "I have seen him naked in his bath." I do not think the evidence is carried any further from the fact of his having seen him undressed.

Next we have Serjeant Joseph Brittlebank, now drill instructor of the Worcester Yeomanry Cavalry. He was a non-commissioned officer when Roger Tichborne joined. He only knew him at Portobello barracks, in 1850 and 1852, not having been at the same stations with him in the interval. He saw the defendant at the Royal Hotel, Birmingham, on the 26th August, 1872. There was going to be some public meeting, and he was then surrounded by his friends, and the witness could not see him, but he heard his voice, and felt convinced that he was Roger Tichborne. It was the voice he had been in the habit of hearing. The defendant came up

to him and said that there was a great change in him. The witness asked what the change was, and he answered that witness was much stouter. Then he says, he asked the defendant what troop he, witness, belonged to. He said he thought he belonged to the E troop, which was quite correct. He asked if the defendant knew Lyons in the regiment; the defendant answered "Serjeant-Major Lyons." Then the defendant asked the witness if he was not with the troop at Fermoy when a stable took fire and burned some of the horses. Brittlebank answered yes. Roger Tichborne never was stationed at Fermoy, unless indeed it may have been on some march, when he possibly might have stayed there. But it would be the same thing whether Roger Tichborne knew of this event of his own personal knowledge, or knew it as a regimental matter. It would be the same thing with reference to his knowledge of a circumstance which took place in the regiment a long time before, and the witness says that that incident did take place.

But this evidence is met by that of Henry Bigmore, also a Carabineer, who says that he had an interview with the defendant twelve months prior to that of Brittlebank, when he asked him if he knew who was the troop serjeant-major of the B troop—Lyons having been the serjeant-major—when the defendant said he did not know.

With regard to the fire at Fermoy, the witness Bigmore gives some curious evidence which may tend to show how the ignorance of yesterday may be converted into the knowledge of to-day. Speaking of this same interview he says: "I asked him did he remember any calamity occurring on the road to a number of Carabineers while they were marching from Cork to Dublin? Mr. HAWKINS: What said he?—At first he said no; then I asked, 'Do not you remember a fire occurring on the road burning some troop horses?' He said, 'Yes, I heard of it; it occurred through a man lighting his pipe in the stable.' Q. What did you say to that?—I shook my head in dissent. Q. Did you put any further question to him?—I then asked him, as he had heard about it, could he tell me in what town it occurred? He told me Newbridge. Q. What did you say to that?—I told him it did not occur within 100 miles of Newbridge. Q. Did you say anything more to him? Did you tell him where it occurred or anything of that sort?—I told him it occurred in the town of Fermoy. Q. Did you say how?—I told him how it occurred, by a candle falling from the wall alight and igniting the straw."

## ONE HUNDRED AND EIGHTY-THIRD DAY.

*Friday, February 20, 1874.*

The LORD CHIEF JUSTICE: Gentlemen, before I proceed with the summing-up of the evidence, I think it right to say that I have received a letter from Mr. Guildford Onslow, in which he asks me, in justice to him, to correct a statement which I am reported to have made, that he advanced the sum of 3,000*l.* to the claimant, to be paid 6,000*l.* on the latter gaining his estates. He says that is not the case, and that the real fact is that another person advanced this sum on his own conditions to the claimant, to meet the expenses of the commission to Chili and Australia, he, Mr. Onslow, being security for the sum of 1,000*l.* only. In the first place I should observe, if I have been reported to have said that Mr. Guildford Onslow advanced the sum of 3,000*l.*, there has been a mistake. I never said so. It was his steward who advanced the money, as appears in the defendant's schedule, as I understand it. I certainly did suppose that Mr. Onslow had been security for the money thus advanced by his own steward, but it turns out he was security only for part of it. Then he wishes me to state that the only reason which induced him to attend public meetings was in consequence of the late government refusing to reply to the questions he put to ministers in the House of Commons, leaving him the only alternative of the public platform to enable him to fulfil his promises to the Dowager Lady Tichborne not to abandon the cause of her son. That may be so; I do not at all dispute his statement; but it does not seem to me to make the slightest difference as to the impropriety of agitating the public mind and creating a storm of popular passion and prejudice in respect of a case actually pending before this court. Then he makes a statement about the photograph of the grotto; but with that I will deal when I come to the relations of Roger Tichborne with Miss Doughty. I thought it right to call attention to this matter, that if in any remarks I have made, I have said anything incorrect, or done any one injustice, it may be set right; and therefore I felt it right to read Mr. Onslow's statement on the subject. With reference to this matter, my Brother Lush puts into my hand what the defendant said about it at page 1719 of his cross-examination, when questioned on the subject of his schedule filed in his bankruptcy, in which there appears:—"Q. 'Guildford Onslow, Esq., M.P., Ropley, Hants, 3,200*l.*?' What does that represent?—That represents 1,000*l.* - Q. You got 1,000*l.* for that do you mean?—I gave him a bill of 3,200*l.* for the 1,000*l.* LORD CHIEF JUSTICE BOVILL: He gave you or you gave him?—I gave him. The



SOLICITOR-GENERAL: You gave him a bill for 3,200*l.* for the 1,000*l.*? If I recollect this right, Mr. Guildford Onslow and Mr. Guildford Onslow's steward, Mr. Harwood, have got bills for 6,200*l.*?—I do not think Mr. Guildford Onslow has got anything to do with it. I think it is all for his agent. Q. All for his agent?—Yes. Q. His agent has gone in for 6,200*l.*?—Yes. Q. Mr. Guildford Onslow's agent?—One of the bills is in Mr. Onslow's name, because Mr. Harwood did not wish to take the whole on himself. Q. So Mr. Guildford Onslow took it?—There is some arrangement; I am quite certain Mr. Onslow has no interest in it. Q. Mr. Onslow has no interest in it?—Except 200*l.*, that is for horses I bought of him. Q. He sold you some horses for 200*l.*?—He sold me a horse for 200*l.* Q. 200*l.*?—Or 100*l.*, and something else; I do not know what the other 100*l.* was, I am sure. Q. There is an arrangement, as you understand, between Mr. Guildford Onslow and his agent?—I think so. Q. As I understand, Mr. Guildford Onslow took it in his own name for 3,200*l.*?—Yes. LORD CHIEF JUSTICE BOVILL: I have not got the amount of Mr. Harwood. The SOLICITOR-GENERAL: 3,000*l.*, my Lord. One is 3,000*l.*, and the other 3,200*l.*” It was upon that foundation that I made the observation I did make.

I now go on with the military witnesses that remain. There is a witness of the name of Cheetham, who saw the defendant at Macclesfield in October, 1872. The defendant did not know him. The witness saw the defendant afterwards in the evening at the drill hall, and asked him what troop he joined, and he answered the “F” troop—which was right. Then comes a man of the name of Broadhurst, who saw the defendant at Macclesfield at the same time, and he says the defendant came forward at once and said, “Your name is Broadhurst.” He did not recognise the defendant until he had some conversation with him. He asked the defendant who was the adjutant when he joined, and he answered Mr. Bickerstaffe; he asked him who was regimental serjeant-major, and he answered Fraser; he asked him who commanded the K troop, and he answered Captain Sawyer. Upon which the witness says he was so satisfied, from those answers and his appearance and walk, that he was Roger, that he at once acknowledged him. He says he recognised the voice, but it was a little more hoarse. Afterwards on cross-examination, the object of which was to show that the defendant's recognition of him was not a real recognition, he says that there were thirteen people present when he first saw the defendant, all of whom knew him. He admits that when he recognised the defendant by his eyes and the twitching, he had read in the newspapers that the defendant had a twitch.

Then Alexander Box saw the defendant on the morning he was

coming up as a witness, and asked him whether he knew Colonel Hay, and if the Colonel did anything to him at a field-day in Cahir, and he said "Yes, he used to put me in the ranks," which the witness says he has himself seen done several times. "I asked him what kind of horses Colonel Hay had. He told me he had two chesnuts; one was a very high stepper, and that Lieutenant Bott bought the horses of Colonel Hay." He says that was right. Then he asked him if he recollected Mrs. Hay, and what kind of woman she was; and he said, "She was an ordinary looking woman." "I asked what kind of dogs she kept, and he told me a 'small poodle dog;' that was correct. I asked him who was the captain of my troop; he told me Captain Croker; that was right. I asked him who got the troop after Captain Croker, and he told me Captain Haywood, who went to the 16th Lancers, and made an exchange with Captain Burton." Then he is cross-examined, and says, "The moment I saw him this morning I recognised him, the moment I saw him getting out of his brougham"—before he had that conversation—"and the conversation convinced me more."

Then Alexander Adams said he went to the railway station at Newcastle to see him, and said to a gentleman there, "There is Sir Roger, if there is one on the face of the earth." The gentleman said, "I will put you before him," and invited him to come. He went. Then he says he had some talk with him. "I asked him what the Commander-in-Chief that inspected us at the Viceregal Lodge—the Duke of Cambridge—said to the Colonel? He said that the Duke said—'he hoped the regiment would retain as good a character on coming back to Dublin as he could give them out of it.' When he said that I was satisfied."

Then Charles Phillips, the warder at the Kent County Jail, who was formerly serjeant instructor of musketry in the Carabineers, states that he saw defendant for the first time on the 21st of November, 1871, when he, the witness, was examined on the former trial. He afterwards admits that he is wrong as to this, as he was taken by Mr. Spofforth to the 'Waterloo Hotel' on the 17th of November previous, and that on this occasion he talked with defendant for three quarters of an hour. The witness then asked him "if he knew anything that occurred when the regiment arrived at Herne Bay," and the defendant replied, "You mean the men would have no dinner because they had no knives and forks," which Phillips says was quite correct. Also he asked him "who met them on the pier at Herne Bay," and the defendant said, "Colonel Jones." He then asked him "what the Colonel said," and the defendant replied "that the regiment was countermanded," which was correct. Phillips states he then asked defendant about an incident that occurred at Canterbury of one officer shooting at another. He said to him, "Do you recollect

an officer shooting from the ante-room window?" and the defendant said, "I recollect Lieutenants Bott and Pinkney: I was in the place at the time, in the ante-room." The witness goes on to state that the defendant told him he was in the building at the time, and he says he saw him there along with those officers. That they were there altogether. Upon which the examination continues as follows: "Dr. KENEALY: I thought I understood you to say that you saw him along with Lieutenants Bott and Pinkney in the ante-room?—Well, it is the same. They were there altogether. Q. I thought you said that one of them shot at the other from the window?—So they did. Q. Then they could not have been at the window at the same time?—They were there all three. Q. What, when the shot was fired?—Yes. Q. Then could it have been fired from the window?—Oh! they fire a good many shots from the ante-room window. Mr. JUSTICE MELLOR: But you do not fire at a man in the same room through the window?—Well, he was firing at an officer outside in the barrack-yard. Q. But you say it was a Lieutenant Bott fired at Lieutenant Pinkney, or Pinkney at Bott, as I understood?—Ah! you misunderstood me, my Lord." I then asked him what he said did happen, and what officer did fire at another? and the witness answered, "Lieutenants Pinkney and Bott fired from the ante-room window at an officer who was at drill. Q. What, both Pinkney and Bott?—Yes. Mr. JUSTICE MELLOR: Two different shots?—Yes, they had two pistols." Upon which, astonished at such a statement, I said, "Two officers fired at another officer who was on duty in the barrack-yard?" and he answered—"They were only pea-revolvers, my Lord: it was only a joke—only a bit of fun that is. There might have been some powder in them. Dr. KENEALY: Are they real or mock pistols?—They are real pistols. Q. What building was this ante-room, one of the barrack buildings?—In the officers' building, set apart for the officers to read and smoke in. Q. Was it from the window of that room they fired these peas?—It was." Then I pointed out that he did not say fired peas, but pea-pistols, and asked the witness "What was in them?" to which he answered—"I cannot swear to that, and think they were meant to fire bullets." Of course the witness did not mean that the pistols were loaded with ball. The man's manner was such as to lead us to think he must have been drinking, and his statement that officers could fire pistols at an officer on duty, without notice being taken of it, is altogether incredible. Indeed one of the jury interposed, and asked whether it was not a waste of time to continue the examination of this witness; and Mr. Hawkins declined to cross-examine him.

The next witness is William Bird, who saw defendant for the first time since his return to England, on Friday last, outside the court. He says he knew his walk directly, and he had half-an-hour's



conversation with him at Poet's Corner. He says, "I commenced the conversation by saying it was of no use putting questions to him concerning what had occurred in the regiment, but I said, 'I will put one question to you that I believe no one else knows anything at all about except ourselves. Do you recollect the promise to give me a sovereign?' I had not then told him who I was. He said, 'I recollect giving you the sovereign,' and he maintained that he gave it to me. I said he never had, and that he had acted a very ungentlemanly part over the affair. I asked him if he knew me. He looked at me for two or three minutes, and then said, 'I recognise you, but I really cannot recall your name; but you were Mr. Norbury's servant.' Then I asked him whether he remembered the room his father stayed in during the time of his visit to Cahir. He said 'the bottom room downstairs.' I asked if he recollected the name of the officer whose rooms his father stayed in. He did not. I asked him if he recollected the night that he broke his sword in making a rush at an officer with it drawn. He said he recollected it perfectly well, that the point stuck, that it caught in the door post, snapped, and broke. I told him I picked up the piece of the blade that was broken off and kept it. He said the officers were playing practical jokes on him, which was a common occurrence, and his temper being up he drew his sword." That is one of the extraordinary statements, which would show, if true, that this regiment was in a strange state, when such a thing as that could have passed without being inquired into. But this man's evidence is open to grave suspicion, owing to the pertinacious statement which he couples with his story about the sovereign, namely, that he saw the father, Mr. James Tichborne, who was going away from Cahir to Dublin, off by the car, and that Mr. Tichborne was going to recompense him for his trouble, but found he had no spare money about him, and told him to go back to his son and ask him to do so, and that Roger, who was then washing his hands, said he would give him a sovereign, and took out a 20*l.* note for the witness to get changed, but the witness said it would do another time. He goes on to say that he went again two or three days afterwards for the purpose of getting the sovereign, when Roger said he would give it him, but he must have a receipt for it, and the witness replied, "If you do not give it to me until you get a receipt I never will be paid," and that he had never been paid from that day to this. He was asked whether he would undertake to swear that Sir James Tichborne went away by himself and sent him back to Roger, and that he then found Roger; and he stuck to it, and asserted positively that Sir James Tichborne went away by himself, and that his son did not go with him. He further states in cross-examination that Roger was not away from Cahir with his father, but after the latter left Roger returned to his

duties and went regularly on with them. Now we know to a positive certainty that that is untrue, because we have not only the letter of the son stating that he was with his father in Dublin, but also a letter from Sir James to his wife stating that Roger had accompanied him from Cahir to Dublin; and further, we have the evidence of Mons. de Brimont, who was with them at Dublin, and which is entirely in accordance with the letters. I think, therefore, the evidence of this witness is, to say the least of it, very doubtful.

Then there is George Wild, who was living at Sandhurst, and was formerly servant to Captain Jocelyn and Lieutenant Johnstone in the Carabineers. His statement is, that he waited on Roger when his own servant was not there, and that defendant is the man. That at Mr. Holmes's office he recognised him as soon as he heard him speak and saw the twitch in his eyes. That Roger had a soft voice, and defendant's "is the very same," with a little foreign accent in it. Then, in the course of cross-examination, he says he recollects the night when the now major, then Mr. Forster, put a low woman in Roger's bed, who drew his sword on her, and the major wrenched it out of his hand. That a lot of the gentlemen had strapped the woman down in the bed, who made such a noise that she might have been heard all round the barracks. That upon the major making his escape out of the room, Roger fired off a revolver at him, and the ball went through the panel of Captain Jones's door. One cannot help suspecting that there must be some gross misrepresentation in this man's statement. It is difficult to believe that this regiment can have been in such a state of discipline as that an officer can have drawn his sword on a woman and fired off his revolver at another officer without any notice being taken of it. And the witness was positively contradicted by Major Forster, who denied the truth of every part of the story, adding, first, that at that time revolvers were unknown in the regiment; secondly, that Captain Jones's rooms were on a different floor from Roger Tichborne's, so that the shot could not have gone through the panel of Captain Jones's door as represented by the witness. This evidence, however, is of little importance to the present purpose, as nothing passed with the defendant on the subject of it. But the observation presents itself that here, as in the somewhat similar statements of Bird and Phillips, the officers whose names are implicated had been called for the prosecution; and if the defendant had been mixed up in these transactions, it is surprising he should have omitted to suggest to his counsel to cross-examine with reference to them. It may fairly be inferred from the omission that he knew nothing of these things till these witnesses stated them. The witness was cross-examined on the subject of Carter's visit to Sandhurst, where Try, Cairns, Waddington, and Brittlebanke, old Carabineers, were then living. He stated that Carter

came there and stayed two days in the spring of 1867, and asked him to go to Mr. Holmes. That he brought Waddington with him, and they talked of some of the things which happened when Mr. Tichborne was in the army. That Carter told him Roger had become a great deal stouter, and believes he said, "Although he has got stouter, you will still see the twitch of the eye." That Carter was—to use the witnesses own words—"drinking up and down the place," and going into the public-houses at Sandhurst, and that he, Carter, and Waddington went together to Mr. Holmes's office, where he saw defendant, who called him by his name. That when he heard him speak he missed the foreign accent. That Waddington went in first to the defendant, while he remained outside, nearly an hour, with Carter. There can be little doubt that Carter made the most of his opportunity in preparing these soldiers to recognise Roger Tichborne in the defendant.

Then Benjamin Broadhurst, the serjeant-major of the Cheshire Yeomanry, remembers Roger Tichborne at Dublin and Canterbury, by his large eyebrows, and the twitching in the eye and forehead. He says he had broad shoulders, inclined to be high, and a peculiar walk, a weakly voice like a lady's, and a foreign accent. He saw defendant at the meeting at Macclesfield in 1872, who at once came forward and said, "Your name is Broadhurst." He did not recognise the defendant till he had had some conversation with him. He asked him who was the adjutant to the regiment when he joined, and he told him Mr. Bickerstaffe; and who was the regimental serjeant-major, and he answered, Serjeant-Major Fraser; and who commanded the K troop, and he said Captain Sawyer. That he recognised defendant as Roger Tichborne by his voice, but the French accent was gone, except a little, and he was also convinced by his features and walk. That is the last military witness who speaks to conversation. There is a whole body of them who speak to their belief in the identity of the defendant with Roger; but these are the only ones who speak to conversation and reminiscences of Roger, and to whose evidence I have therefore thought it right to specially call your attention.

Now there comes a witness of whom a great deal has been made, Mr. John Greenwood, regimental tailor of the Carabineers. He says he knew Mr. Tichborne well from the time he joined until he left. He was in the habit of supplying him with clothes all the time, and Roger kept an account with him. He remembers his features and personal appearance; he gives the measurement of his chest. "I measured him twice. The last time his chest measured thirty-seven inches. When he joined he was thirty-six and a half inches round the chest—measured under the armpits, over the shirt (waistcoat not included), the same as civilians. The second and last time he was thirty-seven inches round the chest, and twenty-nine round the waist.



I measured him in Ballincollig, when they changed the clothing from scarlet to blue. He had become larger in the chest and smaller in the waist in consequence of the drill, which expands the chest and reduces the waist by the presence of the belts and the position they have to stand in. We always find that the waist decreases. It puts the stomach down a little." Then he says he talked to Roger occasionally, and he believes he has a recollection of him, and he believes the defendant is he. He says, "His hair was dark brown; I cannot see any perceptible difference between his hair now and then, in the colour. He wears it different from what he did then, in the length. He had the French accent rather strong when he first joined the regiment, but he lost it to a great extent before he left." Then he says, "I particularly noticed his eyebrows, because the French messman had exactly the same. He used to have a little raising in the eyebrows to the time he left, but not to the extent that I think I have heard some represent." As regards the French accent, he says Roger had it strong when he first joined, but had lost it to a great extent, if not entirely, before he left. On that point there is a great discrepancy between the witnesses. Some say it was just as bad, and some say it was improved. He says that, for the purposes of the last trial, he received a letter from Mr. Holmes, forwarded through his son, inquiring for Roger's measurement. He left his address at Mr. Holmes's office as he was passing through London, and he got a letter to go to Croydon. Thereupon he went to Croydon and saw the defendant. He says, "I did not recognise him the moment he entered the door. He asked me to take a chair and sit down, and wished to have a little chat. He then said he supposed I was come down there to recognise him, or see if I could recognise him. I think I spoke to him as to the difference of the nose. I discovered a difference, and I think I mentioned it." He explained it arose from his having had a fall. "I cannot say I knew the colour of Roger's eyes. They were medium eyes. There was an expression in them, but I cannot explain what. I saw the same expression in defendant's. I asked defendant if he had not lost some teeth. I observed they were deficient. Defendant said he had lost two. I noticed the peculiarity of his walk as he stepped into the room. There was the same peculiarity in the walk I had noticed in Roger. I thought the voice appeared to be the same, but rather deeper. I accounted for that from the stoutness. I did not find any trace of the foreign accent. When I had questioned him and had had a good look at his features, I said I had brought my ledger with me to see if he knew anything about the articles I had made for him. He replied that he thought it was rather a severe test, after so many years, to question him as to what garments I had made him. I said, 'I shall exclude regimentals altogether.' I

asked him if he recollected two coats I made him during the last year he was in the regiment; his reply was, 'You made me a monkey jacket; I had it a many years.' I do not think the colour was mentioned. I think he said a blue monkey jacket. I told him that was not the garment I alluded to. I was not aware that I had made it, and I told him so. He said then that I had made him a scarlet hunting coat. He mentioned the button 'H.H.' He hesitated some time before he recollected the hunting coat. I then referred to the page in my ledger where I knew it was. The entry is 'Furnishing scarlet hunting coat, Sept. 13, 1852.' There is also an entry, 'Sept. 18, buttons to ditto.' Another, 'Octr., 1850, furnishing blue pilot coat, lined with flannel and strapped seams, stitched outside.' Defendant could not see what was written in the ledger. I told him when he mentioned the scarlet coat that he was quite correct. I said, 'Now, I made you another of a peculiar kind; take time and see if you can recollect about it.' It was some few moments before he gave me an answer, and he said, 'Do you mean that light drab driving coat you made me? You made Captain Haywood one of the same sort.' I am under the impression he described something about the stitching. I told him that was correct. I was in his house about two hours and had luncheon. I spoke to him about Cahir barracks, and said, 'Do you recollect how the barracks were supplied with water.' He said, 'No, I do not, unless you mean the old man with the water cart.' I said, 'That was what I alluded to;' and he then described how the officers used to tease the old man by pulling the spiggot out and letting the water go. I felt convinced then that he was Roger; and when he explained about his nose, I was satisfied by his appearance and by his features.' With regard to Roger Tichborne's alleged habit of raising the eyebrows, he says, "when he was in the act of speaking he would raise the eyebrows as if he had not confidence to look at you." I cannot quite understand what he means by that. He says, "Both legs inclined to be weak; he was in-kneed a little." On cross-examination, he is asked about the correspondence between him and Mr. Holmes, and that was put in. I do not think it amounts to anything more than such a communication as would pass from a professional man, who wanted to know the particular information a person could give. He says Mr. Holmes showed him a good many affidavits, which was according to the system Mr. Holmes pursued. He says he thinks it most likely, Mr. Holmes did tell him that he was not to be surprised to find the defendant stout. He says, when I went to see him, the defendant came in and said, "How are you, Greenwood? You have not changed much; there is no alteration in you." I said, "Really I was not prepared to see you so stout as this." The reply was, "Well, you have not altered much." The witness admits that the defendant knew very well that he was coming there—a fact which,

possibly, may throw a good deal of light on this conversation. The witness says, "Six months before the last trial I saw defendant; he showed me a pair of old regimental trousers and an old jacket. I don't recollect whether he told me they had been taken care of by Lady Tichborne, and given to him when he came back." But there is the fact, Mr. Greenwood went to measure the length of the regimental trousers to see whether they would agree with the size of the defendant in the length of the leg, and so on, which he found they did. He tells us the regimental trousers were used for that purpose. It is asked how should the defendant know anything about the H. H. hunting coat and the driving coat, and the monkey jacket? But where did the regimental jacket and trousers come from? It is clear the defendant produced those, and it is quite clear that Roger must have left them behind him somewhere. We know from the letter written to Mr. Gosford at the end of October, when Roger was going to Upton, that he desired that all his clothes and things should be sent there from Tichborne, and they were sent; and he afterwards says he is going down to Upton to fetch away his things, and we may presume he did so. It is true that those things may have been given away, to this person or to that person. But it is to be observed that the H. H. hunting coat was a new coat that was made in the month of October, 1852, and, therefore, would have been worn very little; and, therefore, if the old regimental jacket and trousers were kept, it seems to stand to reason that the newer articles of dress, the hunting coat with the H. H. buttons, the driving coat, and things of that sort, which he did not want to take with him to South America, would be left behind; and either would be left in the care of Lady Tichborne, or, if he left them at Thompson's or any other place, would, in all human probability, be given up to her when it was found that Roger was no more. All this might be doubtful were it not for the production of this regimental jacket and trousers; but the production of these leads fairly to the inference that the other things were kept also; and, if those things were left behind, and did come into the hands of Lady Tichborne, and were handed over to the defendant, as would appear to have been the case from the production of those two articles of dress, the probability is that the defendant, having the articles thus left behind in his possession, and looking them over, would have seen the hunting coat, and the drab driving coat—the monkey jacket on the daguerreotype would account for his knowledge of the latter—and so would be enabled to answer Mr. Greenwood's question as to the garments which he had made for him. In addition to which, every prudent man keeps his bills, or at all events keeps his receipts; and Roger was a man who appears to have been methodical in matters of business, and I dare say when he went away did not destroy his receipts, but left them behind him. If those bills and



receipts were preserved, and came into the hands of the defendant, who knew that Mr. Greenwood was coming down, he would naturally look at the bills, in case Mr. Greenwood should talk to him about what articles he had made, or he might have looked over the bills among the former papers. If he did, he would have seen the items of the H. H. hunting coat, and the drab driving coat, and the blue pilot coat, which latter article figures in Mr. Greenwood's account for 1850, in which a blue pilot coat is charged for. So that I do not feel there is the same cogency in the evidence of Mr. Greenwood as to the recollections which the defendant exhibited to him as is to be found in some other parts of the evidence. It might very easily be accounted for. It is true there is one circumstance which is striking, and that is that one does not see that knowledge could be acquired, either from the possession of the articles of dress in question, or from any bill that the defendant might have had access to, of a similar driving coat having been made for Captain Haywood. That certainly looks as if it were a genuine recollection of the defendant, and yet the bill might have referred to it as being the same as was made for Captain Haywood, or Carter or McCann may have known the fact. All that is for your consideration. If, indeed, we could be quite certain the defendant had not seen the clothes, or had the bills and receipts to look to, or anything in connection with them, the evidence of Mr. Greenwood would certainly be very strong.

Mr. Greenwood tried another test. He produced a photograph group of three officers of the regiment, Captain Betty, Captain Fraser and a Mr. Duboble, the likeness of Captain Fraser being in the center, and asked the defendant if he knew any of them. He says, "He looked at it for a moment and said 'That is Fraser, the quartermaster,' the others he did not know;" yet Captain, now Colonel, Betty had been in the regiment some months before Roger left, having joined when the regiment got to Canterbury, and the likeness, according to the witness, was a good one. And even his knowledge of Captain Fraser, when taken in connection with the evidence of Mrs. Phillips, the wife of Major Phillips, the former riding-master of the regiment, may only have been apparent. Mrs. Phillips tells us that on the 29th of March, 1867—which date was fixed by its having been written by her husband on the defendant's card as the date of his call—four months before the date of Greenwood's interview, the defendant called to see her husband, and while her husband, who had been upstairs asleep, was dressing, she, having returned to the drawing-room after calling him, took up a book of photographs, and pointed out some of the likenesses as those of officers of the regiment. Among others, she showed him the likeness of Captain Phillimore, and then, in the center of a group of three, that of Captain Fraser, saying "that is Captain Fraser." The defendant

did not tell Mr. Greenwood that he had already seen the photograph, and Mr. Greenwood of course remained under the impression that the knowledge of Captain Fraser was a genuine recollection of the individual.

There remains the evidence of Captain Sankey, who did not belong to the Carabineers, but who is connected with the recollections of the life of Roger Tichborne in Ireland. He was uncle of Captain Morton, and knew Roger very well, when at Cahir and Clonmel, especially the latter, the relations of Captain Sankey living in the immediate neighbourhood. He says that in 1870 he happened to be in London, and having some time before received a letter from Messrs. Baxter, Rose, and Norton, he went to their office, and was taken to the Waterloo Hotel and shown into a room where Mr. Spofforth was, after which he was taken by Mr. Spofforth into another room, in which he found the defendant. He tells us what took place: "The defendant was standing with his back, I think, to the fire, and there was a table before him, and I looked at him. It struck me at once he was the Tichborne I knew in the Carabineers. I then asked him, 'Do you know who I am?'—'Oh,' he said, 'You are Captain Kellett.' I said, 'Oh no, I am not.' 'Oh, no,' he says, 'you are Captain Sankey,' directly. He did not hesitate a moment when I said, 'I am not.' He said, 'How you are altered,' or 'changed.'" Now there is no resemblance whatever between Captain Sankey and Captain Kellett, as you will remember, having seen them both; but the defendant begins by saying, "You are Captain Kellett." He addresses Captain Sankey as Captain Kellett; he finds that is wrong, and then says, "You are Captain Sankey." There is one thing that struck me about that, which might very well lead him to think it was Captain Sankey. The defendant had written some time before to ask that Captain Kellett and Captain Sankey would call upon him and see him. We heard Captain Sankey, and I think no one could mistake what part of her Majesty's dominions Captain Sankey came from; and if the defendant was prepared to see either one or the other of the two gentlemen, on hearing the unmistakable Irish accent, he might surmise it was one or the other, and when he found the one he was speaking to was not Major Kellett, it would not be an unlikely guess that he was Captain Sankey. It may have been so. At the same time, it may have been only confusion of memory; but there is this further fact, which shakes one's confidence in his recollection of Captain Sankey as distinguished from Captain Kellett. If we can trust the memory of Captain Villars Morton, who gave evidence before you, the defendant, in that officer's presence, when he met Captain Kellett going out of court at the last trial, mistook Captain Kellett for Colonel Betty, another of the officers of the regiment.

The witness goes on to say, "I believe the first question I put to

him was, if he remembered a horse that my nephew had had, one of his chargers. Q. Did you say 'my nephew,' or 'Captain Morton?'—I cannot recollect whether 'Captain Morton' or 'my nephew.' Q. You do not remember which you said?—No, I do not go further: I said 'my nephew,' or 'Captain Morton;' I might have said so, because they were on intimate terms, and I always called him so. He says, 'Oh, yes, I remember him very well—a devil to ride.' I then asked him to describe this horse to me, the colour, which he did accurately. Q. Did you simply ask him to describe the colour, or describe the horse?—The colour. Q. What did he say?—'A chestnut.' Then I asked him the shape of the horse. He said 'A hollow-backed or herring-boned.' MR. JUSTICE LUSH: Is that what he said?—He did. THE LORD CHIEF JUSTICE: Did he say hollow-backed or herring-boned?—I think he made use of both terms; I will not be certain now; that was exactly the description of the horse." Then he is asked, "Did he draw a sketch?—He did. Q. A sketch of the charger?—Yes, I remember now something or other he drew. Q. A sketch of the charger your nephew used to ride?—About his back, because I wanted to get as good a description of the horse as I could, and he did take a pencil. Q. Was there something peculiar in the horse's back?—The horse was a hollow-backed horse. Q. But was that peculiarity shown in the sketch?—Yes. By the JURY: An outline?—Yes." On cross-examination he is asked, "Did you happen to know where that horse was bought—that roach-backed horse?"—Gentlemen, I do not know about the term "roach-backed;" because we find when we come to the cross-examination of the defendant, he calls it "a roach-backed horse," which is the very reverse of a "hollow-backed horse;" but the learned counsel adopts the defendant's phrase, and says, "Did you happen to know where that horse was bought—that roach-backed horse?—No, I could not say. Q. You only remember the fact that Captain Morton had it?—That is all. Q. His recollection of the horse struck you as being a very remarkable thing?—Well, it did. Q. Probably it never occurred to you that Captain Morton bought the horse at York in 1853?—I never heard that at all. I could not say where the horse was bought. MR. HAWKINS: Do you recollect now the horse itself, the particulars of it?—I remember it perfectly. Q. Had he any white feet?—No white feet. Q. No white upon him at all? Had he a star upon his forehead? I only want to know your recollection?—Well, I could not say positively. Q. I dare say you would not say whether he had one white foot?—The horse had not white legs certainly; you will find very few chestnut horses which have not some white about them in the leg. Q. Will you undertake to say he had not?—I will not. To the



best of my belief he had not. The LORD CHIEF JUSTICE: Do you remember the name of the horse?—I do not. Mr. HAWKINS: It is described as roach-backed, and herring-backed. They are both fishy horses. A roach-backed would be an arched-back. Mr. JUSTICE MELLOR: This was called both a herring-back and a hollow-back. Dr. KENEALY: An arch-backed horse that he bought in 1852." Then I say, "Arched-back would be convex instead of concave;" and Dr. Kenealy says, "I have a notion that Lord Chief Justice Bovill called it roached-backed. I will not undertake to say. Mr. HAWKINS: At page 718, you will find the defendant's own description of what a roached-backed horse is; it is his own term."

The witness next says, "I asked him then if he remembered the Reverend James Morton. His answer was, 'Oh, very well; he was a great bigot.' Dr. KENEALY: Anything further?—No; it ended there. I know he used to quiz him. I have heard of him quizzing him. The LORD CHIEF JUSTICE: Heard who quizzing him?—About wearing something round his neck. Q. Who quizzed?—The Reverend Mr. Morton. Q. Quizzed Mr. Tichborne?—Yes, on various things, Friday fastings and all that. Of course, all in fun, larking. Dr. KENEALY: It was meant in fun, not bigotry or anything of that kind?—No, meant in fun, as he might have thought it was." Then, continues the witness, "I asked if he remembered my nieces, and he said he did. He described them to me, and he said one was very fair and the other dark, which is the fact. Q. Anything further?—Nothing more; it ended with that. I asked him another question, if he remembered a particular shop in Clonmel. Mr. JUSTICE MELLOR: Did you name the shop?—I did; I said Miss Smith's." I imagine this must have been the person Mr. Stores Smith says he asked the defendant about, and the latter could not answer him. The witness continues, "I asked if he remembered Miss Smith's? I asked the description: she kept a shop, a great place for gossip; it was a great place at that time for the officers in Cahir assembling, a sort of rendezvous. Q. A great place for gossip?—Yes, it struck me, he said that word at that time in a very French accent, more so than any other word, when I have had conversation with him. Mr. JUSTICE MELLOR: The word 'gossip' do you mean?—Gossip. The LORD CHIEF JUSTICE: Do you mean the whole sentence?—He said a great place for gossip. Q. Did the French accent pervade the whole sentence or the last word 'gossip' only?—Gossip. Q. Only that word?—Only that word. Q. Was it the word 'gossip' that struck you as being with the French accent?—The 'gossip' alone, my Lord. When I was leaving the room what struck me very forcibly was, he said, 'Captain Sankey, I hope your

sisters are well.' *Q.* Why did that inquiry strike you?—Why, his remembering such an immense time whether I had sisters or not; I knew they knew him. *Q.* About how long did the conversation last?—I should think very nearly an hour, off and on, because he mentioned a great number of people about Cahir, the Sergeants, the Grubbses, and O'Ryan's, and Chator, all people I knew; I did not know them intimately, but knew they were all residents of Cahir. *Mr. JUSTICE MELLOR:* Did he mention them as persons residing in the neighbourhood?—Yes, they resided in the neighbourhood of Cahir, all of them." With reference to his recognition of the defendant, he says that Tichborne of the Carabineers had a melancholy face, and it struck him that the defendant had the same. Further he says, "The moment I saw him walk it struck me at once he had a particular way. He turned in his right knee, and turned his foot out a little." There was a good deal of cross-examination about the voice, and he admits that the defendant's is a rougher voice, that the voice is decidedly rougher a good deal than when he first knew him.

Now in this evidence there are two or three things which are no doubt striking. In the first place there is the knowledge of the particular horse which Captain Morton had in the regiment; but then are we quite sure the two persons are speaking of the same horse? You see a hollow-backed horse is one thing, and a herring-backed horse, or roach-backed horse, is a different thing. The form of the back is reversed. When we come to the defendant's cross-examination by-and-by, we shall find that he speaks of a "roach-backed" horse as belonging to Captain Morton. Now, according to Captain Villars Morton, his brother never had a roach-backed horse in Ireland; he may have had a horse of a peculiar formation there, but Captain Sankey knew nothing about the roach-backed horse, the horse the defendant is speaking of, which was a horse bought in England, and this horse may have been known to the defendant, if Roger Tichborne, no doubt, but it never was in Ireland at all; and, therefore, to speak of such a horse as one he had in Ireland must be a mistake. The roach-backed horse was bought at York in 1852, when the officers, having all got rid of their former horses with a view to going to India, were obliged, on the order for India being countermanded, to get fresh horses to re-mount. If Captain Morton had a horse in Ireland with any particular conformation of back, that must have been a different horse. So much for that.

Then as to the acquaintance with the different people in the neighbourhood of Cahir, there is this observation to be made, that this interview took place after the defendant had had a good deal of intercourse with a gentleman of the name of Cooke, whose acquaintance he appears to have made before leaving Australia, and whose

relations lived in the immediate neighbourhood of Calir and Clonmel. You will find, from a letter of the defendant, in which he speaks of Mr. Cooke as being then staying with him, that that gentleman was staying with the defendant at his residence in Croydon; and we find afterwards that Mr. Cooke goes to Ireland to see his relations; stays with those relations for some time, and then comes back to the defendant's house and stays with him again in like manner, which would be considerably before this interview with Captain Sankey; and this gentleman coming back from that neighbourhood, would of course be very likely to talk about the various persons resident in its vicinity, which might really revive the recollection of those persons in the mind of Roger, or, as the case may be, have conveyed information about them to the mind of the defendant, which he might make available in his interview with Captain Sankey, if he was not in reality Roger.

Connected with Roger Tichborne's Irish life it occurs to me there are two female witnesses, Mrs. Woodman and Mrs. Pearce, the daughters of the man who kept the lodge gate at Glengall Park. They mention his coming there several times when going to walk with some of his brother officers in the park, and that he and his companions used to stop to have a talk at the lodge; and they tell us of his having an affray on one occasion with one of his brother officers; and of his complaining to their father of the restraint put on him as to smoking, and of his melancholy, dejected appearance; and they come forward and say they are convinced the defendant is the same man. They must both have been very young at the time; and, if their statement is correct, as I assume it is, that when Roger came to Lord Glengall's park, he used to stop and have a chat with the gate-keeper, or his daughters, certainly it is a very striking thing, if Mr. Stores Smith is to be believed (of course that is a matter for you to exercise your judgment upon), that the defendant should have forgotten it was the park of Lord Glengall, and represented it as the property of Lord Roscommon, especially as there is no lord of that name. I do not think the evidence of these two witnesses as to identity is worth more than a passing observation, just to call it to your mind, and you will give it what effect you think it is entitled to.

Lastly, as connected with this period, we have the witness Mrs. Ann Markham, the wife of a person in the employ of the North Eastern Company, at York. This witness begins by stating that, being in the service of a French lady, from the year 1846 to 1849, she visited Paris with her mistress for three months in each of the years 1846 and 1847, about the month of June, and on these occasions frequently saw Roger Tichborne walking in the streets with his mother. Now, this statement must necessarily be untrue. Roger Tichborne, as we



know, left Paris in 1845, and did not set foot in it again till the autumn of 1848. The statement is, therefore, calculated to shake our confidence in the witness. She goes on to say that having come to England with her mistress, they travelled, in going to Southampton, in the same carriage with Roger Tichborne, and that she also saw him in 1849 at Winchester, in company with Miss Doughty and others, on the occasion of colours being given to some regiment. Having become married in Paris to a Frenchman, who established himself at Dublin as a travelling courier, she saw Roger Tichborne there at the end of 1849, and was introduced to him by her husband; after which, she tells us, he used to come to her lodgings to play the French horn, with her husband, who played the violin. He was there, she says, three evenings together, and once he came drunk, when he laid himself on the couch, and she gave him vinegar to sober him. She next saw him in London at the Exhibition of 1851, she says in company with Lady and Miss Doughty. Here, again, we have a statement which it is difficult to accept, as we know from Roger's letters that during the short time he was in town for the purpose of seeing the Exhibition, the Doughtys were at Upton entertaining a party on the occasion of a Roman Catholic church being opened in that vicinity. It is no doubt possible that Roger having afterwards gone down to Upton for a few days, Lady and Miss Doughty may have gone up with Roger to visit the Exhibition again. But the Doughtys having been to London to see the Exhibition before, it is scarcely probable that they would have gone up again for that purpose. Roger, we know, went back to his regiment from Upton. There is no trace in his letters of his having first gone to town with Lady and Miss Doughty.

This witness, Mrs. Markham, tells us that she saw the defendant on the grand stand at the York races in 1871, and recognized him at once as Roger Tichborne. She identifies the defendant in the first place by saying, "He is exactly like his uncle." Reminded that the question was whether he was like Roger Tichborne, she says, "He is more like Sir Henry Tichborne: he is exactly like him; but he is Roger Tichborne at all events." Having said that she recognized him when at York races in a moment, she is asked, "What did you recognize him principally by?—Principally by the features of his father, Sir James, about the lower part of his face, and very like his mother the upper part." Reminded that she had said he was like his uncle, she says, "His shoulders are Sir Henry's; the size altogether. Sir Henry was very stout." With reference to personal peculiarities, she says Roger Tichborne was in-kneed, which she explains by saying that he "walked with his knees turned inwards; particularly one knee; he had a weakness in his knees;" agreeing herein with those of the witnesses for the prosecution, who have observed a peculiarity

in Roger Tichborne's walk. She says, "He had a habit of lifting his eyebrows, particularly when he talked to you"—to which extent several of the witnesses for the prosecution also admit the existence of this habit in Roger. She says Roger had very small hands and feet. As to the hands being very small, she is contradicted by the evidence for the prosecution. As to the feet we have Roger Tichborne's actual measure, which I shall bring under your notice hereafter.

A more striking part of this witness's evidence has reference to two very crucial tests. She states that she observed the lobes of Roger Tichborne's ears when he came to her apartments in Dublin, and that they were "rather fat"—a statement which is directly the reverse of that of Mr. Scott, the Infirmarian, and which, if any faith is to be placed in the daguerreotypes of Roger, is entirely negatived by them. She too, like Captain Brown and Mrs. Neale, speaks to the alleged peculiarity of Roger Tichborne's thumb; but, differing from them, she ascribes it to the left thumb, saying that, "the flesh grew over the nail." Having looked at the defendant's nail, and being asked if it was like that, she answers, "Exactly. The two sides grew over the nail; it is there." Having said this, when asked in cross-examination whether anyone else knew of this peculiarity, she goes the length of saying, "His mother knew, his father knew, Miss Doughty knew, and Lady Doughty knew." Now, as this witness was not acquainted with any of the family till after Roger Tichborne had left England, and, so far as we know, never knew Lady and Miss Doughty at all, it seems a bold assertion on her part to say that all these persons knew of this peculiarity.

But still more startling is the further statement to which I am about to direct your attention. In June, 1853, this witness entered the service of Sir James and Lady Tichborne, as housekeeper, and she goes the length of saying that Sir James used to call his wife "Fanny," as well as "Harriet." Now, this evidence, I presume, was adduced for the purpose of accounting for the defendant having given the name of Frances, instead of *Félicité*, as one of his mother's Christian names. But the learned counsel who put the question appears to have forgotten that, according to the defendant's explanation, he gave the name of Frances not as a true, but as a fictitious name; and had the fact as stated by the witness been true, that Sir James used to call his wife "Fanny," the defendant, if Roger Tichborne, must of course have known it, and in that case would have stated the fact in explanation of his having given the name of Frances, and would of course have instructed his counsel to cross-examine the various witnesses who were acquainted with Sir James and his wife, as to the use of this name. Gentlemen, I must leave it to your judgment to say, looking at all the statements of this witness, and bearing

in mind also her demeanour before you, how far you may deem her worthy of your confidence.

Then there are four witnesses from Canterbury. The first is James Martin, who was formerly a professional pedestrian, who was at Canterbury in July, 1852, and spent seven months there. He says he saw Roger Tichborne there at the barracks, at the Waterloo and the Fleur de Lys Taverns. Roger was present at a match run by him, and took a fancy to his running shoes, and he gave him the shoes which he ran in, and Roger in return gave him half a sovereign. He identifies the defendant as Roger Tichborne. He speaks of the twitch of the eyes; and then tells us a story somewhat similar to that told by the old lady from Poole. Roger was at the Fleur de Lys, when two ladies came in, and the witness says these ladies were offended with Roger, because the action of his eyes was so strong that they supposed he was taking the liberty of winking at them. The witness says he interposed and took Roger's part, and explained to the ladies that it was not winking, but a nervous affection of the eyes.

Then there is Henry Godsmark, a fly-driver at Canterbury, who says he drove Roger about in a dog-cart. He says he first saw the defendant on the 5th of June, 1873, here in court, and did not recognise him at first, but he brought with him four photographs to show to the defendant, as he says, with the view of testing him. He had asked the different photographers of Canterbury whether any of them had a photographic likeness of his deceased uncle, a man who was a dealer in horses, and who had supplied the regiment with the horses which they required when they were remounted, after the order for India had been countermanded, a man well known about Canterbury; it having occurred to the witness that the defendant, if Roger, would recollect his uncle's likeness; so he inquired amongst the photographers, and found that one of them had a photographic likeness of his uncle. Then the photographer put up that likeness with those of three other individuals, and desired the witness not to open or meddle with them in any way until he handed them to the defendant, in order to test his knowledge of which was the photograph of the uncle. Accordingly, he says, he came here with the photographs; he opened them and showed them to the defendant; the defendant, on looking at them, put the three on one side, and taking the fourth in his hand, said, "That is Godsmark." Then, says the witness, I asked him if he knew Godsmark, and he said "Yes; he got all our horses." Now this man, Godsmark, died in 1865, and therefore the defendant could not have seen him since his return to England; if he had ever known him, it must have been at a former time; and therefore his recognition of him in the photograph is a striking fact. But it is



quite possible that he may have heard of Godsmark as the man who bought the horses for the regiment. Roger had to buy chargers for himself, and would become acquainted with Godsmark, and may have left some mention of him. As you will see from the photograph, Godsmark had a peculiar appearance; he was a man who had an affection of the eye, and had the appearance of being a one-eyed man. And, moreover, he is dressed in the costume which would probably be that of a man dealing in horses—of a man in that sphere of life—there is a peculiar character about the whole thing; so that if the defendant had heard of Godsmark as a one-eyed man, there could be no mistake about the photographs; the other three are of a totally different character. Anyone who had heard of the one-eyed horse-dealer of Canterbury could not make any mistake about them. We do not know that the defendant had heard of him or not, but as he was surrounded by people who were acquainted with the regiment and its transactions, and the purchase of the horses from Godsmark, it would not be surprising, if he had heard something about that circumstance, and so singled out this striking likeness, and named the man whose likeness it was. Besides which, photography has now become so universal that there is nothing surprising in finding persons in almost every class of life occasionally collecting photographs. If any of these people had collected photographs connected with regimental reminiscences, it is by no means impossible that this odd-looking photograph of a well-known character should be among them. I advert to this possibility, because we know from Mrs. Phillips's evidence with reference to the likeness of Captain Fraser, that the defendant was not above availing himself of information thus acquired.

Then William Bilby also lived at Canterbury in 1852, as assistant in the firm of Bilby and Company, tallow chandlers there. He says he knew Roger Tichborne at Canterbury, a tall, dark young man, with dark brown hair, long and straight at the back, and a very thin neck. He says he thoroughly recollects his walk; it was one leg over the other more than anything; a peculiar weakness of the knee-caps; the legs seemed as if not strong enough to carry his body. This is substantially the same account of the weakness of Roger's legs and of his peculiar walk which others of the witnesses both for the prosecution and the defence have given. Then this witness goes on to say that Roger Tichborne and Dr. Andrews and Dr. Moore, the latter of whom was also in the Carabineers, were, in the summer of 1852, at a place called Boughton Aleeph, ten miles from Canterbury; and he was there too. He went into the inn of the place to get some brandy and water, and those three, coming in a dog-cart, tandem, took up his brandy and water and drank it; and he said they must replace it, which

they did. He says he met them again some little time afterwards, driving tandem, with a long horn, and a groom. Dr. Moore and Dr. Andrews alighted, and said they were up to a game, would he help them? Then he says "they tied a rope to a gipsy's stall, drove on, and dragged the stall with a wheel of fortune, all the lot, over on to the grass and stones, and broke all the man's goods and his wheel of fortune." He says, "When I saw the defendant last Tuesday, I asked him if he recollected anything about going to this place, and he said, 'Yes, throwing over the stall; but I almost forget what it was, so many questions are asked me by so many witnesses that it is impossible for me to recollect everything.'" A curious story, three officers, two of them medical gentlemen, to be concerned in upsetting an old man's stall. Then he says he had not mentioned to any one anything about the stall. It is to be observed that, if this account is true, the groom who was with the party would have been Carter, who might not only remember the circumstance but the presence of the witness as well.

There remains that singularly eccentric witness, Mr. Robert Adeane Barlow, whose strange demeanour in the witness-box and outbreak of Mormonism I dare say you remember. He was staying at Canterbury in 1852, and saw Roger Tichborne there four times—three times in the cricket field, and a fourth time, when he met him at the billiard-rooms, where he played two games with him for the tables. He remembers his peculiar gait, and that he twitched with his eyes, and he asserts positively that the defendant is the man.

Gentlemen, I have now gone through the evidence of the witnesses to identity. In the immense mass of evidence there may be one or two still omitted; indeed, it has occurred to me that I have omitted a witness whom I had intended to mention. Among the Poole witnesses I have omitted James Howleston, not altogether an unimportant witness, who, in 1852, at the time Roger Tichborne was living at Upton, was in the employ of a Mr. Hopkins, a grocer at Poole, at whose shop Roger was in the habit of dealing, and who rented the Upton farm, who says that on two occasions Roger came to the shop, and raised a dispute once about a charge made for goods which he asserted had not been delivered, and on another occasion about the quality of something that had been sent, on both which occasions there was some personal altercation between Roger and the witness. Upon this amount of opportunity of observation, this witness takes upon himself to speak with confidence as to the defendant being Roger Tichborne. While the former trial was going on the witness sought an interview with the defendant, as he says, to see if he could identify him, and saw him at the Waterloo Hotel. He says, "He asked me my name. I told him it was not at all likely he should

know my name, but I had lived for many years with Mr. Richard Hopkins. He said, ‘What? Hopkins of the Upton Farm?’ and I said ‘Yes.’ He said, ‘Where is Hopkins?’ and I said, ‘He’s dead;’ upon which he said, ‘Where is Hopkins’s son? I mean the one with black curly hair—the one that used to go out shooting with me when I was at Upton.” This is striking evidence, no doubt, as showing on the part of defendant a knowledge of the man Hopkins and his son; but it must be borne in mind that the defendant had been staying at Poole on more than one occasion, sometime before he saw this witness—as far back as the year 1867—and might have seen or heard of this Mr. Hopkins or his son, and have been reminded of the son having gone out with him shooting at Upton.

Substantially speaking, I think I have now gone through all the material evidence on the part of the prosecution and defence, as regards the opinion and judgment of persons, on the one side or the other, who knew Roger, and who came to speak to the identity or non-identity of the defendant with that individual. I refer to the living witnesses whose evidence have been given before you. But to the living we must add the dead; and, of course, the late Lady Tichborne occupies the most prominent place amongst those who adhered to the defendant, but who are no longer in this world to appear and bear witness on his behalf. With regard to the frame of mind with which Lady Tichborne approached the subject, and as to how far her judgment in the matter can be considered of weight, I have already made such observations as I think the case requires. There is still, however, one observation which remains, and it is by no means an unimportant one, which I have not as yet brought to your particular attention, but which will have to be carefully considered before you finally dispose of this case—I mean the question of handwriting. One of the tests by which the defendant called upon his alleged mother to determine in his favour that he was her son was the handwriting, of which she, of course, should have had perfect recollection. It is difficult to suppose that a mother would fail to remember the handwriting of a son who had lived to the age of twenty-four and had been in constant correspondence with her; and if you find by-and-by that the handwriting is so dissimilar that it is impossible to believe it is the handwriting of the same man, except upon the hypothesis of the learned counsel, which we cannot believe to have been present to Lady Tichborne’s mind, then the fact of the handwriting being so entirely different from Roger’s is an additional circumstance to be taken into account in determining how far her judgment in his favour is entitled to be treated as conclusive.

All I desire to say further on this subject is that, while you should give all due weight to the authority of a mother’s judgment on



such a matter as her son's identity, it behoves you, at the same time, to consider how far those circumstances—the comparison of handwriting included—which you may think should have induced Lady Tichborne to withhold, at all events till further inquiry, the recognition which she conceded, apparently with so much precipitancy—should lead you to think that she was so carried away by the uncontrollable desire to find her son in the defendant that she was incapable of exercising a sound and reliable judgment on the matter. Very strong appeals have been made to you in the name of the deceased mother. Her presence has been, as it were, invoked. Your verdict has been claimed in favour of the defendant in her name. You have been asked whether if she had appeared in the witness-box and sworn that the defendant was her son, you could have resisted the force of her testimony, or dared to withhold the verdict she would have demanded on his behalf. Of course such an appeal was perfectly legitimate on the part of the learned counsel; but I am not at all sure that if Lady Tichborne had lived, and had been before you as a witness, her statement as to the identity of the defendant would have been accepted by you as authoritatively conclusive, unless she had shown a far greater appreciation of the difficulties arising on the facts which further inquiry has brought to light than she appears to have shown with reference to those which were brought to her knowledge, but which she treated with a disregard, which you, perhaps, may think imprudent and unwise.

Gentlemen, when the learned counsel made that appeal to you, the thought occurred to me that there was among the dead, one, who, if living, would have spoken with an authority equal to hers. I asked myself, if the father of Roger Tichborne had been alive, and the defendant had come forward claiming to be his son, whether he, who, when the 'Bella' went down, and months and years passed and brought no tidings of his lost son, was satisfied that the waves of the Atlantic had closed for ever over the one he had loved so dearly, would have received the unexpected comer with the same facility as Lady Tichborne, or would have lent his sanction, in the witness-box, or out of it, to the claim which, in her name, you have been so vehemently called upon to affirm.

Gentlemen, the defendant had also the benefit of the recognition of Mr. Hopkins, who made an affidavit in his favour; and no doubt the observation is a strong one, that Mr. Hopkins, the family solicitor, who had much, or, at all events, some correspondence in his time with Roger, must have been acquainted with him and his handwriting; and Mr. Hopkins took up the cause, not professionally, but as a friend of Roger, with zeal, and occasionally, as it appears, with a vehemence and an impassioned fervour which one would hardly have expected from a gentleman of his age and position.

But here again Mr. Hopkins's judgment is not conclusive, and I will tell you why I say so. In the first place, we do not know whether he acknowledged the defendant from a recognition of the identity in point of Roger's personal appearance or not, but he might have applied, I should think, an unerring test. Mr. Hopkins was perfectly well acquainted with all that had been done with reference to the settlement of the Tichborne and Doughty estates, and I should have thought that the first test that the family solicitor would apply would be to see whether the person who claimed to be Roger, and who, if Roger, would be familiar with the disposition of the family estates and property, possessed that knowledge. You will see, when I come to a subsequent part of the case, what the defendant's knowledge with reference to that matter is, or at least was; and if you find that he was in a state of total ignorance as to the disposition of the family estates, then Mr. Hopkins's recognition of him stands in this dilemma: either the defendant at that time had acquired a knowledge of the disposition of the family property, and so satisfied Mr. Hopkins, in which case, from his totally forgetting it afterwards, the inference may be drawn that he had only acquired the knowledge for a moment by having learned a lesson which he afterwards forgot; or, if Mr. Hopkins ascertained from him that he knew no more about this matter than he knew when he was examined on the late trial, then Mr. Hopkins's judgment is of little or no weight whatever, unless we are to suppose that Mr. Hopkins gave credit to the defendant for having forgotten all those matters with which Roger was quite familiar at the time those dispositions were made. Here, again, the observation as to the handwriting applies. Mr. Hopkins knew Roger Tichborne's handwriting. He had his letters by him. If he had compared them, he must have seen, what you upon inspection will see, that no two handwritings could be more dissimilar. Ought that to have made Mr. Hopkins pause longer than he did before he adopted the defendant as Roger Tichborne? Gentlemen, those two persons are no more, and cannot be called before you. There are persons who might have been called, and who have not been called. I have already observed upon that. But there is a witness now among the dead whom we must range on the other side, and that is Lady Doughty. She was for very many years a second mother to Roger, and in the last years of Roger's life in this country he was more with Lady Doughty than he was with Lady Tichborne. We know that for three years, from 1845 to 1848, he was not at Paris at all. During the time he was at Stonyhurst he passed one-half of his annual vacation at Tichborne; in 1849 he was there for many months continuously; and we know that afterwards he went to Tichborne from time to time when he obtained leave of absence, and was there quite as much as he was at Paris. If there was any one who could be familiar

with Roger's personal appearance, his voice, his manner, in short all those things which go to make up the sum and substance of a man's personality, it was Lady Doughty. Though perhaps I should not be justified in putting her on the same level with the mother, yet the difference as regards the latter part of Roger's life could not be very great. Lady Doughty, with her dying breath, when she knew she was in the presence of death, testified to her conviction that the defendant was not her nephew Roger. If we take the dead into account on the one side, we must take the dead into account on the other; the more so that in this case we have the evidence of Lady Doughty twice given on oath. She was examined on the former trial, and she was examined in this—not that she could be brought into court, for she was actually within a few hours of death, but her testimony was taken, and is entitled of course to the greatest respect and consideration. She may be said to have died declaring her disbelief in the defendant.

There being this conflict of opinion, the consideration arises, to which of these sets of witnesses the greatest credit is due, not as regards the honesty of their intention—I will not put it on that ground—but as regards their opportunities of knowledge and capacity to form a judgment? You have on the one hand as regards the family Lady Tichborne and Mr. Biddulph. Having heard Mr. Biddulph, you will probably think that his opinion carries very little weight with it. But the recognition of Lady Tichborne is a very different thing. Subject to the observations I have made on it, Lady Tichborne's acknowledgment of him is the strongest fact in his favour. Every other member of the Tichborne and Seymour families are on the opposite side, and deny the reality of the defendant being Roger; as do all the friends of the family who have been called; all the French witnesses, who knew Roger Tichborne from childhood to the time he left Europe—Chatillon, his tutor; the Père Lefèvre, his confessor; intimate friends, such as the Abbé Salis and Monsieur d'Aranza; the old servant Gossein; and Burdon, who was seven years in the service. But then he has on his side, as against the family and friends of the family, and the servants of his father, such as Gossein and Burdon, several servants, not (with one exception) in the same position as Gossein and Burdon, who were acquainted with Roger for so many years. The exception I refer to is Bogle. I have already commented on his evidence and said what I think fairly arises on the weight of his evidence, and I do not want to go into that again. No doubt he is an important man to be considered, as few knew the original Roger better than Bogle, unless, indeed, you think him a doubtful witness. Then the defendant has several female servants, and the tenants and labourers about the place, who range themselves on his side. Now who are the



most likely to have been acquainted with Roger—relations like Lady Doughty, like his cousin, Lady Radcliffe, like his aunt, Mrs. Nangle and her children, like his cousins, like the Seymour family, and the others with whom he was living and in constant and familiar intercourse, day after day, and hour after hour—or servants in the kitchen, persons out of doors and labourers on the farm, tenants in the neighbourhood, people who only saw Roger from time to time? Given that they are all equally honest and equally sincere, which I at once assume, which set of witnesses is the most likely to be well informed and able to form an accurate judgment? I think that is a thing not altogether to be overlooked. Then when we come to the military witnesses we find a marked difference between the witnesses on the one side and the witnesses on the other. Of the officers of the regiment, no less, I think, than ten have testified to their belief, to their conviction, that the defendant is not Roger Tichborne. There are also fourteen non-commissioned officers and privates, and in addition to these there are Captain Villars Morton, and Captain Kellett, with whom Roger was acquainted in Ireland. They all state that the defendant is not Roger. On the other hand, he has two officers, Major Norbury and Captain Cunliffe, and he has a large body—no less I think than fifty-eight—of non-commissioned officers and privates who were in the regiment with him, and who say that he is the Roger Tichborne they knew. Here, again, which class of witnesses do you think would be most likely to have a recollection of Roger Tichborne, so as to form an accurate judgment? The learned counsel for the defendant boasted that he had no colonels on his side, but that he had non-commissioned officers and soldiers, and he contended that they, having to stand before their officer and receive the word of command from him, would be more likely to have his appearance and features impressed on their minds, and therefore would be likely to have a more distinct recollection of his personal appearance than his brother officers. Is that so? Amongst those brother officers was one who was regimental sergeant-major of the regiment, and another, the adjutant of the regiment, and who would therefore have had Roger constantly before them on drill; and all these officers, in addition to seeing him in the barrack-yard, or on parade, or when the regiment was out, would be daily in familiar intercourse with him, dining with him in the mess-room, and some of them sitting with him in the evening. Captain Polhill Turner, with whom he was at Clonmel, played *écarté* of an evening with him, of course sitting close to him. Is the position of the learned counsel for the defendant right? Are the soldiers and the non-commissioned officers more likely to have a correct recollection of Roger Tichborne than the officers who, in addition to seeing him in the barrack-yard, had the advantage of his personal acquaintance and society? It is

necessary to consider these things when you are weighing and forming a judgment on all the evidence. The defendant has the advantage of numbers undoubtedly, but I need not tell you that the maxim that witnesses should be weighed and not numbered is one that has existed from the earliest times as one of the elementary rules of jurisprudence, and is one which ought not to be lost sight of. I agree that these Carabineers are as fine a set of fellows as one could wish to see, and it is very satisfactory to find so many of them in respectable positions where they are doing well. With one or two exceptions, to which I have called your attention, I am quite willing to believe those men to be as honest and truthful and speaking according to their conviction as I would believe the highest gentleman to be who came into that box ; but one must weigh their opinions and consider how far their number ought to prevail against what may be thought to be the superior intelligence and education of the others.

But it may be asked, how is it possible that a body of from fifty to sixty persons can be mistaken as to the identity of a man with whom they were for some years in the same regiment, and with whose personal appearance they therefore had abundant opportunity of becoming familiar. In answer to which the question suggests itself whether the solution is not to be found in the similarity, as shown by the evidence, between Arthur Orton, whom the defendant is represented to be by the prosecution, and Roger Tichborne, with respect to one or two most important particulars, misled by which these men may be speaking according to their honest conviction, and yet may be mistaken in that conviction? I do not say that that is so ; it is a matter for you to exercise your unbiassed judgment upon, and I think the way to enable you to do that is to call your attention to certain portions of the statements made with reference to Arthur Orton, to Roger Tichborne, and the defendant, in order that you may say whether there may not have been a confusion between the parties. It is a matter entirely for you, not for me, whether there may not have been such an identity in point of resemblance, as to lead to a common belief in a real identity, which nevertheless may not exist. It is one of the important circumstances of this case, and to which your attention ought to be directed before you form your final judgment.

Now there are two peculiarities in the defendant upon which the opinion of the Carabineers as indeed of many of the other witnesses, in his favour appears principally to have been founded, the movement of the eyebrows, or, as it has been called, the "twitch," and the turning in of the knee in walking. That the defendant has these peculiarities is undoubted. Had Roger Tichborne? Of his relations and friends and brother officers some have denied it altogether, never having observed anything of this sort ; others deny it as matter of degree

only. Here and there we get an admission of an occasional raising of the eyebrows in conversation, and of a peculiar walk and apparent weakness of the leg. But if you believe the relations and friends and brother officers, these peculiarities cannot have existed in Roger Tichborne to anything like the degree which the defendant's witnesses represent. But there may have been quite enough of them to induce these witnesses, with a little exaggeration of these things as they remember them in Roger, to rush to the conclusion that the defendant was Roger Tichborne. Many of them before they had seen him had been prepared by the persuasion of others, or the sight of affidavits, on seeing these peculiarities strongly marked in the defendant, to believe he was their old officer. Some partook of the general excitement so systematically kept up throughout the country. In this frame of mind they may have been easily led to exaggerate what they remembered of Roger's peculiarities, and so have brought them up to the level of the defendant's. Perhaps this is the solution of this great conflict of evidence, namely, that there has been exaggeration on both sides. It may be that when you come to look at the evidence with regard to one or two of the peculiarities of Roger Tichborne on the one hand, and of the defendant on the other, you may come to the conclusion that there is something between the two which, with a little exaggeration with reference to Roger Tichborne, may have led to the belief of identity. If one is predisposed to believe in the identity of a person with some one else, and there is a small resemblance between them, and from other causes one is led to a belief in the identity of the one man with the other, it is easy to persuade oneself that the resemblance is much greater than it really is. We are all subject to self-delusion, and the human mind is so apt to persuade itself into the belief of that which it desires to believe, that if there is a likeness between A. and B., and you want to make out the identity of the one with the other, you seize upon the points of resemblance, and it becomes easy to exaggerate the resemblance in those points, and to persuade yourselves of the presence of that which you desire to find. And it may be that in this way these witnesses have exaggerated the degree of resemblance between the defendant and Roger, just as it is possible that those who, from the point of view at which they looked at the case, could only see in the defendant an impostor, would persuade themselves that there is not the likeness which in point of fact there is. For I cannot but believe that, whether the defendant is Roger or is not, there are, and must be, some points of resemblance between the two. It is difficult to believe that a body of honest people would come forward and say, "That is Roger Tichborne," if there was not a likeness between the defendant and Roger; and I do not think that even the members of the family would have for a moment entered into communication with the defendant if they had not hesitated at once to reject him from finding that there was, at



all events, some degree of likeness which called for further examination. If they had gone into the room and found a fair man instead of a dark man, or a short man instead of a tall man, they would naturally have said, "It is impossible; we do not stop to talk to you; you are not the man; he was six feet high and you are only five feet five," or things of that sort. There must have been some points of resemblance, although they may not have been sufficient, when they put all things together, to stand in the way of their pronouncing him to be not the true man, but an impostor, but which nevertheless must have existed to a certain degree, or they would not have gone into the question at all. But then the very same thing applies to Arthur Orton. How is it that a respectable body of witnesses come forward on the one side, and say, "This is Arthur Orton," while on the other there is another body of persons, who, independently of any question of scar or pock-mark, say, "This is not Arthur Orton?" How is it that one set of persons who undoubtedly are expressing their honest belief are found to say there is identity; while others, equally honest, say there is not? Why is it that one party see a resemblance, and are satisfied of the identity, while the others see no resemblance whatsoever? Possibly because, in both cases, the one party exaggerate the amount of resemblance, while the other party unduly diminish it, as their minds are swayed by preconceived opinions, or partiality, or prejudice, according as those things may more or less influence them.

There being thus, as I presume there must have been, some general resemblance—at all events no such striking dissimilarity as to preclude the possibility of identity—if there happened to be two or three peculiarities common to both, though in an unequal degree, it would require only a little of the exaggeration to which I have just been referring to lead many to conclude in favour of identity. The defendant has a peculiar brow. He has a peculiarity in the movement of his eyebrows. He is in-kneed, or has a peculiar walk, which gives him the appearance of being in-kneed. Roger Tichborne had peculiarities of a similar character. If the witnesses for the prosecution, who, to say the least, are as likely to know as those on the other side, are right, he had these peculiarities in a much less degree. The peculiarity in the walk did not arise from his being in-kneed, but merely from weakness; nor, according to most of the witnesses, did it give him the appearance of being in-kneed, though Mrs. Townley says she thought him knock-kneed. The so-called twitch, according to many of the witnesses who admit the existence of some peculiarity, was nothing more than a raising of the eyebrows when animated in conversation. Captain Manders ascribes it to nervousness, owing to the inability to find English words to express his meaning. But in a greater or less degree Roger Tich-

borne had these peculiarities, and to men impressed with a foregone conclusion, these peculiarities in Roger Tichborne, even if less marked than they exist in the defendant, might, without much effort, be magnified into something of a much more decided character. It may, however, be very fairly said that the coincidence in respect of general likeness and of these special peculiarities is a strong circumstance in favour of the defendant. But then we have the very same coincidence as between the defendant and Arthur Orton. Here, as in the case of the defendant and Roger, I must presume, from the concurring testimony of so many witnesses as to the identity of the defendant with Orton, that there is some degree of likeness. Arthur Orton had a heavy brow. He had a movement of the eyebrow, possibly the remains of the St. Vitus's dance, though some of the evidence states it to have been common to him with his father. He too, according to the evidence of several of the witnesses, had a peculiar walk, which gave him the appearance of being in-kneed. There is something very striking in the coincidence of the description given by some of the witnesses who speak as to Arthur Orton and those who speak of Roger Tichborne.

It will be necessary that at some time during the course of my address to you I should call your attention to the evidence relating to these peculiarities of the knee and brow, with reference to their bearing on the question of the identity of the defendant, with Roger Tichborne on the one hand, and with Arthur Orton on the other; and perhaps it would be as well that I should do it at once, as being pertinent to the matter immediately in hand, as well as to the larger question of identity. It is a part of the inquiry to which, in my opinion, very great importance attaches.

There is no doubt that the defendant bends the right knee inwards in walking. There is equally no doubt that he has a constant spasmodic or nervous movement of the eye and brow. Had Roger Tichborne these peculiarities? If so, had he them to the same degree as the defendant? And the same questions apply to Arthur Orton. If the coincidence is complete and is confined to the defendant and Tichborne, it must obviously go far towards establishing identity between them; but if it was common to Arthur Orton as well as to Roger, and the other facts in the case point to identity with Arthur Orton, its effect becomes at once neutralized as regards identity with Roger Tichborne. Still the importance of the coincidence as between the defendant and Orton remains with reference to the subject we are now upon, because it may account for, and enable us to appreciate at its true value, the opinion of those who have founded on it their judgment as to identity of the defendant with Roger Tichborne.

First, as to any peculiarity in Roger Tichborne's walk. A strong

body of evidence has been adduced on the part of the defence, both of witnesses from the neighbourhood of Tichborne and from the old Carabineers, to establish the existence of this peculiarity in Roger. Some of the witnesses go the length of absolutely making Roger knock-kneed—in their zeal carrying the case in this respect too far to be of service to the defendant, whom no one has asserted to have any actual malformation of the knee, but, as I understand it, simply the peculiarity of bending in his right knee as he walks. One man goes the length of saying of Roger that “his two knees knocked together.” Two or three say he was knock-kneed. Another says he was in-kneed, so as to be nearly knock-kneed. But when we look at the different account given by the rest, and, above all, when we bear in mind that so many of his brother officers, who can have no object in deceiving us, as well as so many of his relations and friends, though they may have observed something peculiar in his walk, never noticed any indication of his being in-kneed, which, had there been any actual malformation, they must have done, one can scarcely doubt that these statements are greatly exaggerated, so much so, indeed, as materially to shake our confidence in the honesty of the evidence. The majority of the men are more reasonable. A few, indeed, represent him as more or less “in-kneed” with one leg—they are not all agreed which—a few say it was the left, while the majority are agreed it was the right; but several of them speak of it only as an inclination of the knee to bend inwards *in walking*; speaking of it, not as arising from a malformation, which would be visible when he was standing erect, but from defective action, which some of them attribute to weakness.

Thus, Sergeant-major Hamlet says, “He had an awkward gait: one of the knees bent inward in his walk.” Thomas Broadman says, “His hips were narrower than his waist, so that he could not keep up his sword-belt. He had a loose, careless walk, his right leg a little in.” Edward Hornybrook says, “I fancy there was rather a weakness in the left knee”—he is wrong as to its having been the left—“when I saw him walking. He had an awkward walk. The right knee turned in very much when he walked.” Mr. Greenwood, the regimental tailor, says, “He was particularly small from the hips downwards, which gave peculiarity to his walk. His legs would appear to be as if they were weak, or disproportioned to the upper part of his body. There was an inclination in one of his legs to bend in: I could not positively say which leg it was.” McEleny, another Carabineer, says, “His walk was rather peculiar: he used to turn, I think it was the left foot out, and he had a weakness in the right knee: he used to walk as if he was weak.” In like manner, Try, another soldier, says, “He used to walk in-kneed a little with one leg, I don’t remember which. He used to seem very weak on one leg.”



Bilby, another of the defendant's witnesses, says, "He had a peculiar weakness of the knee-caps; the legs seemed not strong enough to carry the body." Mrs. Adams, the wife of a Carabineer, says, "There was something peculiar about his knees; weak knees, I think. He had weak knees." Mrs. Markham says, "He walked with the knee turned inwards; he had a weakness in his knees." Mrs. Noble, the wife of the farm bailiff at Tichborne, says, "He was a little weak, with one knee turned in a little bit sometimes—rather a turn in the knee. Sir James had the same walk, similar to Mr. Tichborne that I knew before he went away."

The result, then, of this evidence, as it appears to me, is, that while there was a peculiarity in Roger Tichborne in the inclination of the right knee to bend inwards, this inclination was not the result of conformation, but of action arising from weakness, and manifesting itself only when the limb was in motion.

So much for the evidence for the defence. If we turn to the evidence on the other side, we find a very different picture, and it becomes doubtful whether even in the more limited degree to which the witnesses last referred to have spoken, Roger Tichborne had this peculiarity; at all events, whether it amounted to anything more than a peculiar action of the limb arising from the weakness. I take the Paris witnesses first, as having known him the earliest. Monsieur Chatillon says: "There was nothing peculiar about the formation of his knees, or his walk. Mr. Roger was very upright; perfectly well built and shaped." Gossein says: "He had not anything crooked about his leg. I never remarked any peculiarity about his walk; he walked very straight." These two witnesses had often seen Roger undressed, having frequently bathed with him till he was fifteen years old. M. d'Aranza says: "He turned his feet a little inward, but nothing very remarkable; there was something peculiar about his walk." Next come the members of his family. Mrs. Greenwood was asked on cross-examination, "Do you not know that Roger had some slight peculiarity about one of his legs?" and she answers, "His legs were perfectly straight; but the brothers"—alluding to Alfred as well as Roger—"rather turned out their toes; I did not think there was anything so very remarkable." His aunt, Mrs. Nangle, and his two cousins, Mrs. Hibbert and Mrs. Higgins, were asked no questions on this head, but Lady Dormer being asked, says, "He did not walk well; he rather shuffled in his walk, but he had no deformity." Miss Nangle says, "I knew his walk well. There was just a little peculiarity; he had very thin legs, and used to walk with a sort of rapid stride bending his legs forward." Lady Radcliffe says, "He took long steps, and rather bent his knees when he walked; I never observed any peculiarity in the form of his knee; he was not in-kneed." Mr. Alfred Seymour says he did "not notice any pecu-

liarity about his legs or either knee. He was not in-kneed: he had an odd, sharp way of walking, turning his feet out. There was no peculiarity about his legs besides being very thin." Lady Rawlinson was not asked as to this peculiarity, but Mrs. Bouverie says, "He walked rather as if his limbs were loose. *Q.* Do you remember whether he was in-kneed or knock-kneed? did you notice that?—Oh, no. I should say he was not knock-kneed." Mr. Gerald Fitzgerald, a friend of the family, says, "I walked about with him, but never observed he was in-kneed. He was a loose-made man, very slight." Mr. Vincent Gosford, than whom no one can be more competent to give us information on this subject, says as follows: "He had a peculiar walk, which was noticeable; he turned his toes out and jerked his legs forward as he walked. His step was rapid, and there was a loose way of stepping, not the firm step of a soldier; a peculiar step, a jerky action of the leg as he threw it forward, but no deformity whatever that would be noticeable. I have seen him walk, run, jump, and dance scores of times, and could not have failed to notice anything peculiar. It was an active walk; there was no impediment to it." To a question put on cross-examination, he says, "There was nothing whatever about his legs that ever attracted my notice except his habit of walking with his toes turned out. It was more the action of the legs, not the shape of them; they were very thin legs." Mrs. Gosford says, "There was nothing remarkable in Roger's walk, beyond his putting his foot on the ground flat and walking very quick."

Thus far this evidence would tend to show that there was nothing beyond a certain peculiarity of action in walking. But two of Roger's relations appear from their evidence to have observed something more than had attracted the notice of the other witnesses. Mrs. Townley, on being asked about it, says, "He always struck me as being rather knock-kneed, his legs were so very thin, and they looked so very weak. In walking he always impressed me with that idea." But the impression seems to have been confined to his appearance in walking. She is asked, "Did you ever see him stand up erect?—Yes, but I do not recollect seeing it then. *Q.* You say he struck you as being knock-kneed; was that walking or standing still?—Walking. *Q.* Never at any other time?—No. Mr. Danby Seymour, on being asked, "Did you ever notice anything peculiar in the walk?" says, "He walked in a slouching sort of way. *Q.* Was he at all in-kneed?—I think he was. He walked in a sort of slouching, shuffling way, not strong. *Q.* You have seen in-kneed and knock-kneed men; did he not walk much in the same way?—He walked in a slouching sort of way. I never saw his legs. *Q.* You have seen in-kneed men walking, have not you?—Yes. *Q.* Did he not walk as an in-kneed man walks?—I could not say. He was not

so much in-kneed that you would say he was in-kneed. *Q.* You have said he was in-kneed. Do you mean to withdraw it?—I do not know whether he was in-kneed or not. *Q.* Why did you say he was in-kneed?—I did not know I had done so.” Mr. Scott, the infirmarian from Stonyhurst, says, “His legs appeared perfectly straight, but when walking seemed to give way a little; in walking he bent his knees as though it was from weakness.” The LORD CHIEF JUSTICE: You say they were straight?—His legs were straight. *Q.* But in walking?—He bent his knees. SERJT. PARRY: From weakness, I think you say?—Yes, as though it was from weakness. *Q.* When standing up straight, was there any defect in the make of his legs?—I never saw any.” In cross-examination he adheres to the same view, admitting that there might be the appearance of being in-kneed, but ascribing it to weakness alone.

A similar difference in respect of observation appears in the statements of the former brother officers of Roger and the men of the Carabineers called for the prosecution. Thus Colonel Bickerstaffe cannot say “there was anything peculiar about the walk, beyond a very curious way of kicking his sabretache.” He is asked, “Did you ever notice any peculiarity about the formation of his legs?—Not the slightest.” Major Jocelyn says, “There was nothing very particular, except that he was what in a horse would be called a bad goer. He shambled along; he did not lift his feet; and went as if tied by the leg.” Captain Polhill Turner says, “His walk was singular: he turned his legs out, kicking them away from him as he walked. He kicked his legs about very much, and swung his shoulders.” Captain Fraser being asked as to Roger’s walk, says, “He walked perfectly straight, but I fancied he was weak in the limbs. He also appeared to me to be weak when he walked.” I asked him, “Was he what you would call an in-kneed man?—He was as straight in his limbs as a man could be: I believe he was weak in his knees.” Colonel Betty “remembers nothing peculiar in his walk.” Major Bott says, “He walked with short, quick steps, but otherwise there was nothing peculiar about the legs.” Captain Villars Morton says, “He walked peculiarly, but I could hardly call it an awkward walk; he turned his toes out a little.” The soldiers differ in like manner. Shephard “never observed any peculiarity in the walk.” Parker says, he is “certain that Roger Tichborne’s legs were as straight as a yard-stick, and nearly as thin; but his legs were not strong; he was rather weak in the knees; he bent forward in his walk, and turned his toes out, which caused a jerk in his walk.” Swallow says “there was nothing peculiar in the walk, beyond leaning a little forward and walking on the fore-part of the feet.” Peachy says, “He had rather a peculiar walk, a shambling gait. When walking, his knees drooped forwards, not inwards, as if he could



not bear the weight of his body, though he had not much to carry. I suppose it was owing to weakness." One or two of the witnesses for the prosecution go, however, further than this. Captain Manders, on being asked whether there was any peculiarity in Roger Tichborne's walk, says, "What I always attributed it to was general weakness. I do not think there was malformation of his limbs, but he walked like a delicate man, which he was rather: he turned his feet out when walking. *Q.* You heard some say he was knock-kneed?—I think he was as perfect as any could be; but his general weakness made him have that awkward appearance." Irwin, the mess waiter, says, "He had a very shuffling walk. *Q.* Was he in-kneed?—Well, I could not say. He seemed inclined to walk on one side, but I do not think he was what you would call a knock-kneed man. It was a shuffling walk." You remember the witness exhibited before you, in action, what he meant. Bacon, a sergeant in the regiment, being asked by Dr. Kenealy, "Was he in-kneed?" says, "I should say he would be weak in the knees, inclined to droop his knees forward. *Q.* Did not that give an awkwardness to his walk, as if he was a knock-kneed man?—Yes."

What, then, is the effect of all this evidence? As it appears to me, not that there was actual malformation, which, indeed, would be going much too far to fit the defendant's case, but a peculiarity, in the action of the knee, in walking, resulting from weakness, which led to the inclination of the knee inwards, which might not strike every one, but which, to those who observed it, had the appearance of being in-kneed. Such, as I understand it, is the peculiarity of the defendant's walk. Whether it existed in Roger Tichborne in a degree equal to that of the defendant is what you, upon the whole of this evidence, must judge of.

But, next, how stands the evidence with regard to the existence of this peculiarity in Arthur Orton? What if we shall find that he, too, had, by a remarkable coincidence, the very same peculiarity, arising from the selfsame cause, namely, weakness, and in the same joint, namely, the right knee? The proof is to be found in the evidence of the witnesses from Wapping, called for the defence, and whose statements, therefore, cannot be ascribed to any desire to prejudice the defendant. Let us hear what they say. Christopher Dix, the pilot, says, "He had a slouching walk, and dragged his feet—an awkward gait—walking as though his body went forward before his feet went forward." Mr. Page describes him as "slightly in-kneed." "He walked in a slouching way with both legs, as if slightly in-kneed: the right leg most." Henry Steer says, "He walked a little bit in-kneed. His left foot turned that way, and the other one seemed to follow it." Chamberlayne, a retired butcher, says, "He used to walk rather in-kneed with one knee." Bush, the stevedore, says "he

was a little knock-kneed with one knee." Thomas King says "he was rather in-kneed, but not a great deal." Billing, the Custom House officer, says "he was knock-kneed a little—in-kneed rather." Henry Palmer says "he has no doubt Arthur Orton was in-kneed." Williams, the engineer, says "he was slightly in at the knee, not much." Hayward, the bootmaker, says "He used to walk with his feet out, and the left knee seemed to go in a little more than the right. It seemed to make him walk slovenly." Gallaway says, "His walk was slovenly; awkward altogether. I cannot say the knees turned much in: weak in the legs, I should call it." William Webb says, "He seemed to have weak knees, that could hardly carry his body: they seemed to tripple under him from the weight of his body." Thomas Grady says, "He was in-kneed in the right leg, more so than with the other. Unless in walking you would not observe it. If you were standing sideways you could not tell it. In walking there seemed to be in the right leg a kind of weakness in the joint of the knee, so that he had an inclination to bend that knee in more than the other one." So Godhart, who used to see Orton two or three times a-day after he came back from sea, says, "If he walked or ran, his knees turned in, I should say from weakness of the knee. The right leg, as he walked, went in a little, as though it had not strength in the knee to support the body: still he was not what you would call knock-kneed, because if he was standing you would not observe it. I should think it was from weakness in the knee." Mr. Brown, the medical witness from Wapping, says, "He walked as if he was weak in the knees. He bent his knees inwards when he walked, one especially;" thus ascribing it not to malformation but to weakness of the legs.

Next, as to the movement of the eye or eyebrow. The defendant has a spasmodic movement which embraces both; and, as far as my observation went, the movement is not confined to when he is animated in conversation. Though more frequent and more marked on such occasions, it occurs, and not unfrequently, at other times. Had Roger Tichborne this movement? If so, was the movement the same in character and degree? Let us, in the first place, see what is the evidence in support of that position. I take first the evidence which affirms it. Very few of the earlier witnesses for the defence, the people from the neighbourhood of Tichborne, or the witnesses from Poole, were asked as to this matter. It is only when we get to the evidence of the Carabineers that the affirmative evidence assumes a prominent character. Whether the other witnesses had not observed or had forgotten the habit, or whether it did not occur to the counsel to ask about it, I cannot of course say.

Noble, the farm bailiff at Tichborne, being asked whether he had ever noticed anything about Roger's eyebrows, said, "Yes, he had

a twitching in the eyes, a pinker in the eyes." Henry Welsh, a bricklayer of Cheriton, says, "He always had a twitching in his eye and eyebrow." His wife also says, "There was rather a twitching in the eyebrows. Q. When was the twitching?—When he spoke. Q. When he spoke, or when he was spoken to?—When he spoke." Bogle, too, says, "He got a twitch in his eyes every now and then, when he was speaking to me or any one." Of the Poole witnesses, James Howleston, whose evidence we have before had occasion to consider, says, "There was a peculiarity about his eyes when you spoke to him—a kind of wink, or blink." When asked, on cross-examination, what the peculiarity was, he gave the following singular account: "When he blinked, it seemed as if the tear or water would flow over the eye, and then there would be a brilliancy in the eye which you would not find in any other person I almost ever saw. The LORD CHIEF JUSTICE: Then, when he blinked the eye, it watered?—Yes. Mr. JUSTICE MELLOR: You say it was brighter?—It was much brighter from the water. Q. Like varnish on a picture?—Just so; that's the very thing." One would have thought the learned counsel for the defendant would have refrained, in the exercise of his discretion, from giving this witness an opportunity of proceeding any further in this style; but, on re-examination, Dr. Kenealy says: "I want you to describe a little more fully, if you can, this brilliancy you noticed in the eye. Was it when he twitched there was that moisture which gave it the appearance of brilliancy?—Yes, when he twitched. Q. You have been asked about a glare; what do you mean about a glare?—When he twitched, it appeared as if a tear or water had flown over the eye; and when the eye opened, there was a glare and brilliancy in the eye which you would not observe before the twitch. The LORD CHIEF JUSTICE: But I think you say that was the effect of the water?—Yes, the water that diffused itself. Q. Not the eye itself?—No; the effect of the water, as my Lord said, as though it was varnished." I need not observe that no one else has at all concurred in the fantastic representation of this witness. Another Poole witness, Miss Eliza Froude, who also, as you remember, gave us evidence of a somewhat fanciful character, says, on another part of the case, "that when he was a little excited the brow fell down."

I may here add the statement of Miss Braine, who speaks of the movement of the eyebrows, but in terms which fall very short of the account given of it by the witnesses we have been dealing with. "Had he any peculiar habit?" asks Dr. Kenealy, "with reference to his features?—I noticed the raising of his eyebrows. Q. Was that a general habit? or did it occur only at times?—I only noticed it occasionally."



But the strength of the defendant's case on this head of inquiry is to be found in the evidence of the former Carabineers. Two former officers of the regiment were called for the defence. Captain Cunliffe, being asked whether Roger Tichborne had any habit about his eyebrows that he remembered, answers, "He had a way of twitching his forehead and the scalp—not the eyes." You will find that many of the witnesses make the movement include the eyes. *Q.* What should you say as to the part immediately above the eyes—the brow—was that included in the movement or not?—Yes, it moved the hair: when he twitched, it was a nervous, strong twitch, that moved the whole scalp. *Q.* You say it did not move the eye?—I never observed the eye; it moved the part above the eye; the hair used to move with it, and the scalp too. So far as I recollect, the eye was not moved: the whole of the forehead upwards was moved, including the eyebrows. *Dr. KENEALY:* Have you seen him go off into a sort of pensiveness and dreaminess?—Very often. *Q.* At that time have you noticed the twitching?—Yes. *Mr. JUSTICE MELLOR:* When he got into the pensive state?—When he got into a sort of dreamy state, then the twitching would come on. *Q.* Not when he was talking?—No; chiefly when he was silent. *The LORD CHIEF JUSTICE:* The movement of the forehead?—Yes. *Q.* Did you not notice it at all when he was speaking?—When he was speaking, and when he was silent. *Dr. KENEALY:* He used to do it, as I understand you, both when he was in one of those dreamy moods as well as when he was quiet?—Chiefly when he was in the dreamy mood. *Dr. KENEALY:* Chiefly when he was in the dreamy mood, but you have seen him do it when he was speaking?—Both." Captain Cunliffe certainly goes very much further than any other witness we have had before us in asserting the existence of this habit when Roger was perfectly quiet.

Colonel Norbury, you will remember, told us that when he first saw the defendant he recollected that there was a peculiarity about Roger Tichborne's eyebrows, but did not then remember what it was; but the hearing other people talk about what the peculiarity was, had since brought it back to his memory—namely, "a sort of raising or working of the front part of the forehead. I should not call it a twitch exactly. *The LORD CHIEF JUSTICE:* Raising the eyebrows, as I understand, and so wrinkling the forehead?—Yes." A much less energetic movement, as you will probably think, than Captain Cunliffe conveyed to our minds.

Then come the non-commissioned officers and soldiers. It is to be observed that some of these witnesses speak of the so-called "twitch" as a movement confined to the brow alone, others as comprehending the eye. Some of them speak of the movement as hap-

pening, as it does in the defendant, at all times. The majority represent it as occurring only when Roger was engaged in conversation.

Thomas Marks says: "He was very prominent in the brow. He had a sort of lowering of the eyebrows—at least, his forehead—a twitching or winking—an uneasy sort of winking with his eyes." On cross-examination, being asked for a further description of the twitch, he says: "When speaking to you he had a great fashion of this sort;" and the witness described in action what he meant. "*Q.* When speaking?—Just so. *Q.* Do you mean he depressed the eyebrow over the eye, or lifted it up?" The witness again described by gesture what he meant. "*Q.* That was a depressing of the eyebrow over the eye?—I would call it a winking. *Q.* More a winking than a lifting of the brow?—Yes." Further on he says: "He could not speak to you without winking in this way." William Try says: "There was a twitching in his eye occasionally, not continually. *Q.* A twitching of the eye, or eyebrows?—Above the eyebrow—a twitching about the eye. *Q.* Did it include the eye?—Yes, the eye moved. *Q.* Or simply the eyebrow? Some people twitch the eye, and some the brow?—Yes, the brow. *Q.* The brow—not the eyes?—Yes."

Sergeant-Major Manttan says: "He had a habit of moving his eyebrows, raising the skin on the forehead, raising the eyebrows, from nervousness. Mr. JUSTICE MELLOR: In consequence of raising the eyebrows it raised the skin?—Yes, my Lord. Dr. KENEALY: Used he to do that much?—Frequently." Matthew Gale says he has "noticed the twitch when fencing with him with sticks at drill." Lessweare, the former trumpet-major, speaks of the peculiar twitching of the right eye in the defendant, and says he had seen the same twitching in Roger Tichborne." His wife, Ann Lessweare, speaks in like manner of the "twitching." On cross-examination she explains this to mean "a twitching of the eyebrows—rather a raising of them—particularly in speaking, which showed more both the eyes and eyebrows; it was between a blink and a twitching both of the eyes and eyebrows. *Q.* A twitch?—A twitching of the eyes." She confines the twitching, according to her recollections, to the left eye. The other witnesses place it in the right. John Giles says, "He used to wink with one of his eyes." Henry Raynes says, "He always had a twitch when looking up at anybody, a rise and fall of the eyebrows. He had a full sort of eye, with a blink in them." George Wild speaks of the twitching. "*Q.* Do you remember whether he twitched his eye when he was not talking, when he was quiet?—He did not do it so much unless he was speaking." William Davies speaks of the twinkling of the eye in Roger. He says: "I

am quite certain he had the wink in his eye. When he was staring a man out of countenance he always had a wink in his eye."

The following witnesses speak of the movement as occurring only in speaking. Thomas Dunn, being asked if Roger Tichborne had any habit with his eyebrows, says: "Yes, he had a habit, when speaking, of twitching, winking his eyebrows, and twitching his forehead." William Bird, being asked whether he had any peculiar habit in his face, says: "He had a twitching and moving of the eyebrows when you spoke to him. He could not look you straight in the face. It was a movement of the eyes and eyebrows." Michael Carrol says: "I noticed a twitching of the eyebrows when he was speaking. If you looked at him and he remained still, they did not move, but when he was in conversation they would twitch up and down." Walter Moody says: "When you talked to him he had a great twitching, or if he got a little flurried it was more so. The eyebrows worked more when he was talking quick, than if he was speaking to you passively." Frederick Mather is asked: "Had Roger any habit with his eyebrows?—Yes, in conversation he would shut one of his eyes nearly; in fact, one part of his cheek would move. He would twitch one of his eyes, especially when he was put out. Q. You said something about his cheek?—It used to move when he was put out. The LORD CHIEF JUSTICE: What used—the cheek?—Also the eye and face used to move. Q. Below the eye?—Yes, and above also. Q. Below the eye, and the eye also?—And above more so. Q. The left or right eye?—Both of them he used to move, especially the upper part of his eyebrows." Patrick Barry, when speaking of Roger, says: "He had heavy eyebrows, and a twitching when speaking." Sergeant-Major Hamlet being asked, "Whether Roger had any habit about his eyebrows," answers, "He had a twitching when speaking." Thomas Radcliffe says Roger had "a wink in the eyes or eyebrows when he would be speaking to any one." Alexander Adams says: "He had a twitch, I think, in the right eye, if he was speaking to you." Thomas Marks having been asked, on cross-examination, "What he had recognized the defendant by?" answers, "By the prominent forehead and by the uneasy winking or twitching of the left eye. When speaking to you he had a great fashion of that sort. Q. When speaking?—Just so. The LORD CHIEF JUSTICE: Do you mean he depressed the eyebrow over the eye, or lifted it up?" In answer the witness described in action what he meant. "The LORD CHIEF JUSTICE: That would be a depressing of the eyebrow over the eye. I have seen some people lift their eyebrows." The witness answers, "I would call it a winking—I think more a winking than a lifting of the brows. Mr. HAWKINS: You have seen people, I dare say, raise the brow when astonished or



excited. You don't mean that?—No, I don't. *Q.* But a wink?—A sort of wink? *Q.* Was it a constant action of winking?—When he was talking it was a habit. He could not speak to you, I think, without doing so." Martha Walker, wife of a former Carabineer, says: "He had rather a sort of twitching in the eye—a moving of the forehead—a sort of twitch when he would speak to you." Lawrence Richmond says, Roger "had a twitching in his right eye when he spoke." Patrick Hogan, having spoken of the twitch as one of the things which had made him recognize the defendant as Roger Tichborne, was asked, on cross-examination, "You have spoken of the twitching; was that when he was excited?—I never saw him excited. *Q.* Do you mean to say he was always twitching his eyes—a constant thing?—No; when he was speaking to you he might, perhaps, twitch occasionally. He raised his eyes up and down, and his eyebrows the same, when he was speaking to you."

Very different is the account given by the family and friends, and brother officers of Roger Tichborne, called for the prosecution, as to the existence of this habit in Roger, and more especially as to the character and degree which it assumed. The foreign witnesses, the Chatillons, Monsieur d'Aranza, and Gossein, never noticed this movement of the eyebrows, or they have forgotten it. If they ever observed it, it made no lasting impression on their minds. Of the relations, Mrs. Greenwood says, "I never saw any one who could look you in the face more composedly and more quietly than Roger. When he spoke he always looked at the person he was speaking to; he never twitched in the least. He had a manner of raising his eyebrows when talking earnestly, but nothing more than any one else. The LORD CHIEF JUSTICE: You say there was no twitch, but when he was talking he occasionally raised his eyebrows?—When he was very earnest in any conversation. His eyebrows were very marked, I think they were slightly arched."

Mrs. Nangle, speaking with reference to the defendant's twitching, says, "Roger had nothing of the kind." Miss Nangle said, in answer to a question put by me, that in speaking he gesticulated a good deal, as Frenchmen are apt to do. And, on my asking her, "In doing so was there any play of the features of the face?" her reply was, "His eyebrows used, when he got animated, to raise themselves rather, but in a quiet manner. *Q.* Do you mean the eyes or the eyebrows?—The brows. They were naturally arched, and seemed to become more so when he was animated. *Q.* But still, as you say, in a quiet manner?—Quite quiet: no twitching whatever, not the least." Mrs. Higgins is asked, "Could you say whether he had any twitching?" She answers, "I don't think he had any at all. *Q.* When his face was in repose, was there any sudden twitching of the forehead, or anything of that kind?—I never noticed anything of the kind."

Lady Dormer admits rather more. When asked whether there was any peculiarity, she says, "No, nothing. He had a way of raising his eyebrows when excited. His mother had just the same, but no twitching or anything of the sort. Q. His mother had that?—His mother had that very much. Q. No involuntary twitch?—None whatever." Mrs. Whitgrave, an intimate friend of the family, says, "I never noticed a twitch. There was a little movement about his eyebrows sometimes, when a little animated; there was no twitching at all. Sometimes there was a little movement about his eyes: I should not call it a twitch." Mrs. Bouverie is asked, "You have seen the twitch of the eyebrows of the defendant; was there any such twitch about Roger?—No." In cross-examination she is asked, "You said there was no such twitch in Roger as you see in defendant, is that what I understand you?—I said so. Q. Had not Roger a twitch?—Oh, no: no twitch at all. Q. You say Roger had no twitch whatever?—No, he had no twitch." Lady Rawlinson was asked relatively to the twitch whether there was anything of that sort, and her answer is, "Never in Roger Tichborne." Mr. Henry Danby Seymour is asked on cross-examination, "Did you ever notice that Roger had a movement about the eyebrows when he was interested or animated, or excited in conversation?—No. Q. You never noticed it?—I never noticed it. Q. Do you not remember a habit that Roger and your sister had of showing the entire pupils of the eyes at times?—No, I do not remember it. Q. Have you forgotten it?—I have not observed it." Mr. Alfred Seymour is asked by Mr. Hawkins, "Was there any peculiarity of twitch about the eyes?—Not the slightest." And in cross-examination, being asked by Dr. Kenealy, "Are you prepared to swear upon your solemn oath that he had not a twitching about his eyes?" he says, "I am prepared to swear upon my solemn oath that he had not a twitching about his eyes." The evidence of Mr. Vincent Gosford upon this subject is as follows: "You have seen what has been spoken of as the twitch in the eye of the defendant; had Roger anything of that sort?—Not the slightest, no more than I have, or you. It was one of the first things I remarked upon—the absurdity committed by all those persons who—perhaps I had better not allude to it because it was a thing we laughed at throughout, all who knew Roger, and threw it into such ridicule—this hitting at a thing that did not exist—it never had the slightest existence. Mr. JUSTICE MELLOR: When he was animated in conversation or gesticulation, or otherwise, had he any trick of raising his eyebrows. I don't mean twitching them?—Yes, just as I might." Then the witness goes on to describe the pensive expression which Roger's features were wont to assume when in repose. He was asked, "Whether Roger was in the habit of gesticulating, as foreigners usually do?" and he answers, "Yes, he had that habit—not so much as many Frenchmen, but there was that habit still—he would move

his hands. *Q.* Did the face correspond and the eyebrows go up in the same way?—Yes, he raised his eyebrows just like that, but as to any actual twitching it is absurd. *Q.* You never saw any nervous twitching?—Nothing of the kind.” In cross-examination, Dr. Kenealy asks him, “As I understand you it was only occasionally he would elevate his eyebrows when he was expressing surprise?—Yes. *Q.* It was not a habit?—Not more than is usual with many Frenchmen. Every time he was a little animated you would see it; at another time you would not. When he spoke with a little surprise you would see it.” Mrs. Gosford, whose evidence followed that of her husband, was asked, “Did you ever notice any movement in the eyebrows about Roger Tichborne?—Nothing particular, no movement, no more than other people’s.”

Next, let us see what his brother officers and the soldiers of the Carabineers say as to this. Major Jocelyn on being asked, “Do you remember a movement that he had in his eyebrows?” answers, “I never observed it. *Q.* Are you a close observer?—Well, very few persons know themselves, but I fancy I am.” Mr. McEvoy, on cross-examination, is asked, “Did you notice in Roger any movement in the eyebrows?—I could see nothing at all that likened the defendant to Roger Tichborne except that they both had marked eyebrows. My recollection of Roger Tichborne is, that when he laughed he used to shut his eyes very quickly and then open them; his eyes were rather deep in his head. *Q.* Did you never notice any movement in his eyebrows?—No; that was the only movement I observed with regard to his eyes, I did observe that. *Q.* And his eyebrows remained still?—I think so. *Q.* But the eyes blinked?—When he laughed he used to shut his eyes and quickly open them. *Q.* But no motion whatever of the eyebrows?—I don’t think so.” No question having been put to Captain Manders by counsel, I asked him, “Did you ever observe any motion in the eyebrows when Roger Tichborne got warm in conversation, as if the skin moved a little over the left eye?—I have named that to several of my brother officers, but they did not seem to know it. *Q.* Was there any nervous twitching of the eye?—Not of the eye, it was the skin of the forehead over the eye. I have just seen it move a little in that way. *Q.* You say a little? anything very marked?—No; it was only when he had a difficulty of expressing what he felt. I suppose it was a nervous sensation.” Next Colonel Bickerstaffe, in answer to the question, “Was there any twitch in the eye?” answers, “Not the slightest.” In cross-examination Dr. Kenealy says, “My friend asked you something about a twitching of his eye. Did you notice any twitch of his eyebrows?—I have seen him lift his eyebrows with surprise and that sort of thing, but I have never seen twitching. *Q.* Was he not in the habit of moving them when he was particularly interested in



conversation?—No, I don't think at all, only in surprise ; if he was surprised at anything his eyebrows would go up a little, or that sort of thing, but I do not remember any twitching at interesting conversation. Q. I did not ask you about twitching, but the elevation or depression of his eyebrows when engaged in conversation. Did he elevate or depress his eyebrows?—I did not notice that." General Jones was asked, " Did you notice the twitch of the eyebrows, or movement of the eyebrows, in Roger Tichborne?—I think I have when he was excited. Dr. KENEALY: Had he not a habit when he was excited, or when he felt particularly interested in any part of the conversation that was going on, of moving his eyebrows up and down?—I cannot say I ever noticed it. Q. What did you remark, then, when he was excited?—Sometimes I have seen him slightly move his eyebrows when he was in conversation. Q. Up and down?—Yes. Q. Did you notice on those occasions the greater part of his eye used to appear?—No ; I cannot say I did." Major Bott was asked " Whether he had observed any twitching of the eye," and answered, " Nothing beyond a way of throwing back his head when his hair fell over his eyes." Dr. KENEALY: " You have been asked about a twitching of the eyes. Did you notice a twitching or movement of the eyebrows when he was interested or excited about anything?" and the witness again explains, " That all he had observed was a throwing back of the head to get rid of the hair. Q. Was that the only time you observed a movement of the eyebrows in Roger? were there not other occasions, when he was interested or excited in conversation, when he moved his eyebrows up and down?—No doubt ; as I would smile when pleased, or frown when displeased. Q. Was it only when he was pleased or displeased?—I don't say whether it was so at all. Q. Was it so or not?—I cannot say positively." Colonel Betty is asked by Dr. Kenealy, " Did you notice any movement of his eyebrows when he was interested or excited?—No, I never noticed that." Major Kellett is asked, " Did you ever notice a nervous movement about his eyes?—No. Q. Never?—Never. Q. Never heard it the subject of conversation at the mess in his presence?—Never. I am distinct about that." Mrs. Kellett upon being asked, " Whether she ever observed any nervous affection in his face?" answered, " No." Captain Villians Morton is asked, " Whether he ever noticed a nervous movement about Roger's eyebrows," and he answers in the negative. Captain Polhill Turner speaks more affirmatively. He was asked, " Did you also notice the movement of his eyebrows when he was particularly excited in conversation?—His eyebrows went up very often. When he was in conversation or animated he elevated his eyebrows." John Nelson Parker, an old Carabineer, being asked whether he noticed any twitching about the eyes or eyebrows, answers, " No, there was no twitching in Roger

Tichborne's eyes or eyebrows. *Q.* No peculiar movement at all?—Nothing to the extent we have heard; nothing of this great twitching business. *Q.* There was some twitching, but not to the extent mentioned by some witnesses?—No twitching. *Q.* No movement at all?—Certainly not, to the best of my recollection. *Q.* What did you mean to the extent mentioned?—I have heard it said that Roger Tichborne had a twitching in his eye, and have read what the witnesses on the other side gave in their evidence. *Q.* You did not notice it?—No; from my experience of Roger Tichborne there was no such thing as twitching.” Gabriel Swallow is asked, “Was Roger in the habit of moving his eyebrows up and down when he talked?—Not to my knowledge. *Q.* You never saw it?—I never noticed it. *Q.* Did you ever notice he had any eyebrows at all?—I did a good many times. *Q.* What sort of eyebrows?—Nothing much different to any other young man. I never saw any twitching or any thing of that.” Lockwood, another Carabineer, is asked, “Used he not to move his eyebrows up and down a good deal when he talked?—I did not take much notice of it. I never took particular notice of it. *Q.* I am not talking of particular notice—are you prepared to swear you never noticed it?—I am; I swear I never noticed it.” So much for the movement in Roger Tichborne. Upon the evidence taken as a whole do you believe Roger Tichborne had a twitch of the eye and eyebrow, like the defendant, or that it amounted only to an occasional raising of the eyebrow when animated.

The next question is: Had Arthur Orton this peculiarity? There is a considerable body of evidence affirming it. That he had St. Vitus's dance as a boy, and that it not only affected his face, causing spasmodic movement, or, as the witnesses call it, a “twitching” of the features, but also affected the body and limbs, is abundantly shown by the concurrent statements of all the witnesses. By degrees, however, he outgrew the malady; whether this spasmodic movement may have been left as the remains of it may be a question. Many persons who have never had St. Vitus's dance have involuntary movements of this nature, either from some nervous affection, or acquired habit. There is some evidence tending to show that in Arthur Orton the movement was hereditary, his father, old George Orton, having had the same habit of raising and lowering the eyebrow. First, let us take the witnesses for the prosecution. Miss Loader, who kept company with him, says, “There was a nervous affection in his eyes and forehead. It was nothing very particular, just the same as the defendant's.” Mrs. Sophia East, whom the defendant is said to have remembered as the “stout sister,” says, “There was a slight twitching in the eye and forehead, which I have seen when he was talking to my brother. I cannot tell which eye.” Ann Cockburn says, “There was a movement of

the face, the upper part." Frederic Whitbread, who was intimate with the whole Orton family, and knew Arthur from five years of age till he finally left, says, "I knew he was suffering from a kind of twitching. The father had a peculiar nervousness about the movement of his eyes, a continual lowering and raising of his eyebrows while you were speaking to him. Everybody used to notice that peculiarity." Mrs. Hester Howell, being asked whether she had observed anything peculiar about him, says, "I did not notice anything about him further than the twitching. If a person is surprised they sometimes raise their eyebrows, and I thought it was a little from surprise. He did that at times." Frederick Cronin, one of the Cronins who kept the shop opposite the 'Globe,' and about whom the defendant is stated to have inquired after on the evening he went to Wapping, says: "I remember his having a distortion of the features, of the facial features generally." But the witness adds, "So far as my memory serves me, a movement more of the lower than the upper part of the face." His brother, Francis Cronin, goes further. He says: "I knew his features very well. The lower part of his face, the chin and mouth, had nothing particular the matter with it; only the heavings of the lower jaw, and a slight affection about the eyes, when he was speaking; very little about the mouth; but I think it was perceptible in both eyes. He had a way of lifting his eyebrows as near as I can recollect.

Mrs. Charlotte Smith, a daughter of Gosheron, who kept the 'Old 42,' and knew the Ortons intimately, says: "I noticed a little twitching in the face when he was speaking to you as if he was nervous. It showed itself sometimes in the eye and in the cheek; the lower jaw did not move." Mrs. Laws says: "I noticed his face. He used to draw it up the side—his eyes with it. He drew up the right side of his mouth and the eyebrow. It occurred perhaps twice in the course of ten minutes." Henry Allen says: "I noticed he had rather a twitch in the eye. I don't know which eye it was now, but I often used to make a remark to him about it." Thomas William Wallace says: "I noticed a twitching of the limbs, and the eyes blinking."

Mrs. Mina Jury says: "He used to raise the two eyebrows suddenly, and then in speaking to you he twitched one very much indeed. I have noticed him more than once, because I have remarked it."

Lastly, Mrs. McAlister says of Arthur Orton: "One eye used to twitch occasionally."

But the statement that Arthur Orton had this affection is not confined to the witnesses for the prosecution. Several of the witnesses for the defence concur in representing the same thing.



Some speak merely as to a twitching of the features, others speak of this especial twitching of eyes and forehead.

Finnis, one of the witnesses from Wapping, a schoolfellow and playfellow of Arthur Orton, and who knew him intimately till he finally left, says: Arthur Orton had a twitching and contortion of the mouth. I remember a sort of twitching in his features that I thought was spasmodic." Christopher Dix says: "Arthur had a twitching in his face occasionally." Bush says: "Arthur made a twist of the face if you asked him any question." George Champion says: "I have seen his eyes twinkle up or twist up when speaking to his father, or even if I spoke to him, which I did frequently." Mrs. Kemmenoe says: "Arthur had a twitching about the face, the eyes, and mouth when he spoke to you; when he was younger it was much worse." Thomas Newman says: "His eyes would lift up and down when speaking to you, and if he was cross it would do so more. His forehead and hair would all move." Gentlemen, you who have had the opportunity of observing the defendant for so many days will be able to judge for yourselves whether that description of the affection of Arthur Orton tallies with that of the defendant.

On the other hand, several of the defendant's witnesses say they never noticed any affection of the kind. The great majority of them said nothing about it, for the simple reason that no question was asked of them. On the whole, do you see reason to believe that Arthur Orton had, either as the remains of St. Vitus's dance or any other nervous affection, or as an acquired or hereditary habit, a movement of the eye and brow such as you have seen in the defendant?

Gentlemen, you must judge how far in your opinion this description of the peculiarities in Arthur Orton corresponds with that given of them in Tichborne. For if the two correspond, if the peculiarities thus insisted on might lead to a belief in the identity of the defendant with Roger Tichborne, so they are equally consistent with his identity with Arthur Orton; while, if the other facts in the case should lead to the conclusion that the opinion of so many witnesses in favour of the defendant's identity with Roger Tichborne is after all mistaken, the mistake would be accounted for—a mistake natural enough in persons who were quite unaware of the coincidence of these same peculiarities in Arthur Orton, or of the facts which make in the opposite direction, and which have come to light in the course of this inquiry.

Gentlemen, I now pass from the question of identity of person, as based on the opinion of the witnesses, to one of quite as great, if not greater, importance, that is, how far there is, not identity of outward

appearance, but inward identity of mind, which, of course, can only be ascertained by testing the defendant on points on which we must assume that Roger would necessarily have had knowledge. Now, that presents itself in two forms. The first is the shape in which we have had it hitherto, namely, in statements which the defendant has voluntarily made, or conversations which he has had with persons who desired to ascertain whether he was the true Roger or not, or from whom he has sought recognition. He himself has voluntarily entered upon that head of inquiry; and has challenged recognition, upon the ground that he was able to bring before those whose recognition he sought to obtain, instances of knowledge as to things which Roger Tichborne would have known. He commenced his litigation in that way by his affidavit. He stated circumstances which would have been known to Roger if living, with the view of satisfying the court that he was the true Roger; and in all his interviews with the various persons whose acknowledgment of him he has sought, he has professed to be ready to offer, and has spontaneously offered to their attention matters which, having happened to Roger, he alleged were known to him as Roger. This we have already gone through, and upon that the case is complete. But there is another form in which the question of knowledge presents itself, and one which is quite as interesting and quite as important as that to which I have been just referring, and that consists in his answers to the tests applied to him on his examination on the former trial, to try his knowledge of the life of Roger Tichborne. To the knowledge, or want of knowledge, exhibited by the defendant in the course of that examination I am now about to direct your attention, and there is no part of the case more deserving of your notice or more likely to lead you to a sound conclusion.

You remember I divided the life of Roger Tichborne before into several epochs—the Paris life, the Stonyhurst life, the preparation for the army, the life in the army, and the life in South America. I propose to follow the examination in that order. We have pretty well exhausted the subject of the life in South America, incidentally to the inquiry into the Orton case, but the others remain at present more or less untouched, and I must ask you in the first place to follow the defendant's statement with reference to the life of Roger in Paris.

Now, we know that Roger was brought up at Paris, and that he did not leave it until the year 1845, at which time he was between sixteen and seventeen years of age. What, then, are the things which would have impressed themselves on the mind and memory of a boy growing up into the period of adult life? For, the recollections of boyhood still cling to us in after years with the freshness of the age to which they belong, and, though less vivid, even those of childhood do not wholly disappear. What, then, are the things

appertaining to boyhood which a man may be expected to remember? I take it, if I may classify them, there would be first his relations and the acquaintances and friends with whom he was in the habit of associating. He would recollect all or some of those. He would further, in all probability, recollect the residences of his parents, where he remembered himself first, and where he lived with his parents afterwards. He would recollect any school to which he went; he would recollect his playmates and the boys with whom he had been in the habit of associating, especially if they were few in number; he would recollect the tutors who instructed him; he would recollect to whom his religious education was confided; he would recollect the servants who were in the service of his parents if they continued long in the service; he would recollect any excursions which he made from time to time to different places with his parents, if those excursions were attended with particular circumstances. With reference to all those matters relating to the life at Paris, as well as to the facts connected with the other epochs of Roger Tichborne's life, the defendant's knowledge was very properly tested, and I will just briefly call your attention to what he has said on these subjects, in order that you may see whether there was displayed such an amount of knowledge, or such an absence of knowledge, as to lead you to believe that he is or is not the person whom he represents himself to be.

First as to relations and acquaintances. The defendant was examined as to that on the preliminary examination before Mr. Roupell, and he appears to have been totally at a loss at that time; and it is, I need hardly point out, all important to observe what he says, or what he omits to say, on the first and earliest examination, and to contrast it with what he says at a subsequent period, when, having found to what points the examination would be likely to be directed, he had had an opportunity of filling up the void in his knowledge exhibited at first. He is asked, "Do you remember the name of any single person with whom you had any conversation in Paris besides your father and your mother and M. Chatillon?—Yes. Q. Who?—If you ask me, I could tell you hundreds. Q. Tell me some?—I do not remember any just at the present time. Q. Can you tell me the name of any person whom you saw in Paris, besides your father and mother and M. Chatillon?—If you say who you want to know the name of, I will tell you"—So that if the questioner will only tell the name, then the defendant will tell him whether he knows the person. "Q. I want an answer to my question?—The question is so ridiculous. Q. Never mind that; I want an answer?—A person might see 500 people. Q. The question is a very simple one?—It is very simple, but it is very ridiculous. Q. Will you answer it?—Yes; I have seen Mr. Blunt, I have seen Mr.



Callaghan. *Q.* Is Mr. Blunt living or dead?—I do not know. *Q.* Is Mr. Callaghan living or dead?—I think young Mr. Callaghan is living. *Q.* What are they in Paris?—They are bankers. *Q.* Who are Mr. Blunt and Mr. Callaghan?—I say I think they are bankers. *Q.* You saw both these gentlemen in Paris in 1852?—Yes, and Mr. Turville. *MR. SERJT. BALLANTINE:* Spell it?—T-u-r-v-i-l-l-e. *Q.* What is Mr. Turville?—He was a friend of my father; I don't know what he was. *Q.* Was he a resident in Paris?—I cannot tell you whether he resided there permanently or not." He did unwisely here in risking the name of Turville, because we cannot forget the letter written by Mr. Turville from Australia to the mother, in which he says he could not speak to the identity of the defendant, because he had never seen him in his life; therefore, when the defendant said that he had seen Mr. Turville at Paris, it is quite clear he was making a mistake. As regards Messrs. Blunt and Callaghan, he would have learnt their names as Lady Tichborne's bankers. He accompanied her to Mr. Blunt's, when at Paris. The letters from Australia were addressed to her at Mr. Callaghan's. The examination continues: "Did you visit any house in Paris?—Plenty. *Q.* Did you visit any house in Paris?—Sometimes. *Q.* Can you name the house of any person?—No, I do not remember just now. *MR. C. BARBER:* Do you remember who were your associates or playmates while you were in Paris?—I do not remember. You must remember that anything that I am not positive upon, I am going to say that I do not remember. *Q.* But that will not do?—But it will do, because I am on my oath, and unless I remember a thing, and am positive about it, I am going to say I do not remember. Then the Examiner reads: 'I do not remember any of my playmates when I was in Paris; when I say I do not remember, I mean I am not positive?' The WITNESS: That is right. *MR. C. BARBER:* Cannot you tell me the name of a single one of your associates or playmates in Paris?—I do not remember just at the present time. *Q.* But try and remember?—This is no place to remember. *Q.* Yes it is, indeed—Then I don't remember. *Q.* You cannot tell me the name of one?—No, I cannot. *Q.* Cannot you remember any boy that you used to play with?—I have answered that question before."

Let us pause here a moment. The defendant is asked whether he remembers the name of anyone he knew in Paris—relations, acquaintances, or friends, or whether he knew the name of any boy who had been his associate or playmate. Now, there were several persons who were on terms of the closest intimacy with Mr. and Mrs. James Tichborne, and with whom Roger was constantly brought into contact. There was, as we know, the Abbé Salis, who lived immediately below them in the entresol of the same house; there was M. d'Aranza; there was General the Count de Mandreville, the

oldest and most intimate friend the father and mother had, who was constantly in and out of the house, who was particularly fond of Roger, and treated him with the utmost kindness as a sort of pet of his, but of whom the defendant on this occasion showed an entire want of knowledge; there was the Père Lefevre, his confessor, whom he equally omits to name. Besides these, there was living at Paris his aunt Mrs. Nangle, with her two sons and two daughters; and the two sons were the frequent associates and playmates of Roger; for although Mrs. Tichborne could not endure Mrs. Nangle, yet the boys associated together; the tutor Chatillon used to take Roger to Mrs. Nangle's, and Jolivald did so afterwards, and the boys used to go out and take their walks and exercise together. Mrs. Nangle and the two officers, Major and Captain Nangle, all speak to this fact in the clearest possible manner. Then there was Mr. Talbot Constable, who stood godfather to the defendant's child, and whom we expected to see on the present occasion; he was an associate and playmate of Roger in Paris. On this examination the defendant remembered none of them; but a day or two having elapsed, he comes to be re-examined by Mr. Serjeant Ballantine, and then he remembers two names. Mr. Serjt. Ballantine asks, "Have you recalled the names of any of the persons that you knew in Paris?—No more than Mr. Talbot Constable; did I mention him yesterday?" He certainly had not mentioned him; so the EXAMINER says, "No, I do not think you mentioned anybody of the name of Constable. The WITNESS: There was a Spanish gentleman there, a very great friend of my father's, but I do not remember his name just now. Q. In Paris?—Yes. The EXAMINER: I will say 'there was a Spanish gentleman, who was a friend of my father's, but I forget his name.'" Might those names have been suggested in the interval? Lady Tichborne was present at that examination, and was probably surprised her son did not remember the name of any friend or any playfellow in Paris, and is not unlikely to have said, "My dear Roger, how could you have forgotten Sir Talbot Constable, who used to be there a playmate with you when a boy, and M. d'Aranza, the Spanish gentleman, who was your father's old friend, and who is still living;" and thus the failure of knowledge of the first day's examination may have been so far made good between that day and the day of the next examination, which, I think, was on the second or third day after. With regard to Sir Talbot Constable the thing was remarkable, because at that time he had been applied to to be godfather to the Claimant's son. It would look as if he was not aware that he had known Sir Talbot as a boy at Paris. All the others, Major and Captain Nangle and the rest, seem to have been wholly ignored. With regard to the Count de Mandreville, his omitting to mention him is a still more remarkable fact, because, although he died in

1844, we know that in 1846 Roger wrote to his mother for the breast-pin which the Count had given him on his first communion; and when he got that, which no doubt he did, for the purpose of wearing it, that would constantly recall to his mind the memory of this old gentleman who had been kind to him as a boy.

What I have thus far read was from the examination before Mr. Roupell in 1867. When the defendant comes to be examined in 1871 he has a better knowledge of things; but even then, Mr. Giffard, his counsel, who was examining him, of course from instructions, does not ask about anyone in Paris, except certain supposed relations of his mother, as to whom the defendant makes a very great mistake. He is asked, "Do you remember meeting any relations of your mother in Paris?—Yes. Q. Or in France?—Yes, I met them several times. Q. Who were they you met?—They were my cousins. Q. What was their name?—Bremont. Q. Was that a family name or title, or what?—Yes, the father was Baron Bremont. Q. What were the christian names of the cousins you speak of?—There were so many of them: Charles and Edgar. Q. Were Charles and Edgar your companions chiefly?—Well, I saw them frequently; I cannot say they were exactly companions. There were also two sisters, if I remember right, in the family. There were two brothers and two sisters, and then there were their cousins again, Bremonts—three more of them. Q. That would make seven altogether?—Yes. Q. Have you ever been to their home? I am speaking now of the Baron's?—Yes. Q. Where was the house in Paris?—He had a house in Paris, and also had a castle at Rheims. Q. Do you remember going there when you were young?—I have some faint recollection of going there, but not a distinct one." Gentlemen, you remember Roger accompanied his father to the Viscount de Brimont's, a chateau near Rheims, and went shooting there. The father, when writing to the mother, mentions that Roger was then out shooting, and this was in 1848, when Roger was between eighteen and nineteen years of age; and one would have thought that going to Rheims, to the chateau of an old French nobleman, and going sporting there, would have left a reminiscence far stronger than that which the defendant had, when he speaks of "having some faint recollection of going there, but not a distinct one." "Q. I do not think you told me who were the ladies of the Baron's family—the two sisters—what were their names?—Lucie and Marie. Q. Was there anything remarkable about the personal appearance of Charles Brimont?—Yes, he is marked with a red mark on the side of his face. Q. You need not tell me the story now, but was there a story in the family how that mark had been caused?—Yes." Now we have here a very remarkable instance of memory, that after all these years, he can remember seven members of the family, and the christian names of



the sons and daughters and cousins—a very remarkable instance of memory. But he makes a very serious mistake with reference to this family. In the first place he makes the title of M. de Brimont that of Baron, when in fact there was no Baron, the title being that of Viscount. However, that is a minor mistake; the great mistake was in supposing they were relations of his mother's. "Were the de Brimonts your mother's family?—Yes. Q. The de Brimonts were your mother's family, and the Nangles were your father's family?—My father's sister, my aunt. Q. How were the de Brimonts connected with your mother? Mrs. Nangle was your father's sister; what relation was the Baron de Brimont to your mother?—He was uncle."—A total mistake; he was not related to the mother at all. On cross-examination, he falls into further error. He is asked to spell the name, and he spells it "B-r-e-mont." "Q. You are spelling it in the English way, are you?—I did not know there was any difference. Q. I will take it you are pronouncing the letters as you pronounce English letters?—I did not say anything about pronunciation at all. Q. I ask you if you are spelling it in English letters or in French? LORD CHIEF JUSTICE BOVILL: The shortest way would be to ask him to be kind enough to spell it in the English letters?" Then the Solicitor-General asks him to spell it, and he spells it "B-r-e-mont." That is a complete mistake. We know from the Viscount de Brimont himself that the name is written with an "i" and not with an "e," but twice over the defendant spells it with an "e," and not with an "i." Then he was asked, "I think you said they were some relations of your mother's?—They are relations; I cannot exactly say whether through my mother or not; it is very unkind of you to go upon that subject; you might as well not. Q. Very unkind of me?—Yes, it is. Q. Now, first of all, is not the name spelt with an 'i'? Are they not what you call the Bremonts; I have followed you in calling them the Bremonts, according to the real name, Brimonts?—I dare say you may spell it that way if you like. Q. You might spell 'mother' 'muther' if you like? MR. SERJT. BALLANTINE: 'Mother' is not a proper name. The SOLICITOR-GENERAL: But which way is it spelt, with an 'i,' or an 'e'?—Well, I believe at times it was spelt both ways." Well, that is very easily said, but M. de Brimont, who has been called before us, says it was never spelt but in one way, namely, with an "i." It is an ancient French family, and there is no question as to the spelling of the name.

What he had said previously about their being members of his mother's family was then read to him, and he is asked, "He was uncle to your mother?—Yes. Q. Just so; then this Charles and Edgar de Brimont were your cousins once removed?—Yes. Q. Now will you swear that the Baron de Brimont and the de

Brimonts, those young noblemen, Edgar and Charles, were any relations whatever, directly or indirectly, remote or near, of your mother's?—Well, the connection was through the Plowdens in the first instance.

*Q.* Were not they relations on your father's side—on Sir James Tichborne's side?—Well, really I have never gone through the pedigree.

*Q.* What made you say they were relations through the Plowdens? You have gone so far, at all events, as to say, 'through the Plowdens?'—In the first instance, I think——

*Q.* You do know?—But I do not know.

**MR. SERJT. BALLANTINE:** 'Think'——

**THE SOLICITOR-GENERAL:** Now I ask you were not they relations on your father's side—Sir James Tichborne's relations?—They might have been.

*Q.* What on earth made you say, only on the 6th of June last, the de Brimonts were your mother's family, and the Nangles were your father's? You were asked, 'What relation was Baron de Brimont to your mother?' You answer, 'He was uncle.' What made you say that on the 6th of June?—I really cannot say what reason.

*Q.* Is it true?—No, I suppose it would not be true if you say not.

*Q.* What?—I cannot say how it was.

*Q.* Which is true—that the Baron de Brimont was your mother's uncle, or that he was not?—No, I do not think he was my mother's uncle.

*Q.* Then that is not true?—No, I think not.

*Q.* Then why do you say your great uncle?—We always called him uncle.

*Q.* You always called him uncle; do you mean to say that?—Yes, in speaking of him.

*Q.* In speaking to the Baron de Brimont?—No, in speaking of him.

*Q.* To whom?—Anybody.

*Q.* Should I find in Roger Charles Tichborne's letters anywhere where the Baron de Brimont is called 'uncle'?—Probably you might; I cannot say; you might in some of my letters"—Certainly in none of those which are preserved——

*Q.* Will you undertake to say in any one of your letters you ever spoke of the Baron de Brimont as your uncle?—No, I will not undertake to swear it.

*Q.* Then, may I take it he was not your mother's uncle?—Really I cannot answer now." Then he is asked whether he had seen Mr. Baigent since the 6th of June, and had had any talk with him about the pedigree, about the relations; and he says, "None whatever, not one word in connection with the case." Of course it occurred to the Solicitor-General that, the defendant having made the palpable mistake of supposing these were relations on the mother's side, when in fact they were only distant relations on the father's, owing, I think, to the grandfather having married a Miss Plowden, Mr. Baigent, who was a person who knew the family connections and history from beginning to end, was very likely indeed to have said, "You made a mistake yesterday, Sir Roger, when you said that the Baron de Brimont was your mother's uncle; he was no relation on your mother's side, but was a distant relation on your father's through the Plowdens," and that

might account for the defendant now on further cross-examination saying he was a connection through the Plowdens, and admitting that he was a connection on his father's side, and not on his mother's. The supposition was not an unlikely one, but the defendant denies the fact.

You remember M. Charles de Brimont was called as a witness. He told us his great grandmother was a Miss Plowden, thus carrying it a long way back; and showing that there was no pretence for calling the Vicomte de Brimont Lady Tichborne's uncle. He says they never spelt the name in the way the defendant did--de Bremont. He says there was never a Baron de Brimont; the title is that of Viscount. But he says the defendant is right as to the names of his sisters: they certainly were Mary and Lucy; and his brother's name was Edgar, and his own is Charles. The defendant certainly seems to have had a knowledge of this family. If it is from his unaided recollections of Paris, it is a strong fact in his favour, and it shows he certainly has a good memory, in recollecting all the members of this family and their names, after so long a lapse of time. Whether he had his memory as to this family revived by any conversation with Lady Tichborne, or any one else, since he came to England, was not inquired of him.

He is next asked as to the Nangles, his relations, who we know resided at Paris. He speaks of his intimacy with them as that of a common acquaintanceship. He says he knew them in Paris, and he knew Caroline, Miss Nangle, who was examined here, better than her brothers. He was "more intimate with her than with her brothers, but it was only a common acquaintance." We are told by the Nangle family that the intimacy was a very close one. Major Nangle speaks of very great intimacy between himself and Roger; he mentions that they used to go about together, to the Jardin des Plantes, the Zoological Gardens of Paris, and about the boulevards, and do a variety of things of that kind which boys would do. Roger was frequently at their house, and they were constantly together, yet the defendant makes no mention of these relations on the first examination, and on the trial forgot that there was a second daughter, forgetting also that the only one he had a remembrance of gave him a book on the occasion of his first communion. This, however, is a thing that he might easily have forgotten. His ignorance of the fact that there was a second daughter, his own first cousin, is a more serious matter. He accounts for his having forgotten it by the fact that she had gone into a convent, and so he had lost sight of her. But that seems scarcely a sufficient explanation. She was not old enough to go into a convent until long after he left Paris, and we are dealing with his Paris recollections. If there was a second daughter at Paris, whom he saw there with the rest of the family, although she may have gone



into a convent afterwards when she had grown up; and after he had left Paris, would all remembrance of her have entirely faded from his recollection?

The defendant was asked as to the position of Mrs. Nangle relatively to his father and mother, and he says that Mrs. Nangle was a constant cause of quarrel between the two. Mr. Serjeant Ballantine says to him, "Now you say there were disagreeable scenes between your father and mother. Did you know Mrs. Nangle in Paris?—Yes. *Q.* Was she often at the house?—She was. *Q.* Did any of the disagreeable scenes arise in any way whatever connected with her?—They were continually connected with her?" Now in that matter I think the defendant must be taken to have been right. Mrs. Nangle herself admits as much. She is asked whether she ever had any quarrel with Mr. and Mrs. Tichborne, and she says, "Not in the least." I then interposed, saying, "Yes, but did the defendant's statement about it assume that form? I thought that it was rather that she had been the cause of quarrel between husband and wife. Mr. HAWKINS: I was going to put it in that form." He then repeats what the defendant had said about her being the cause of these disagreeable scenes between the father and mother, and says, "Is that true?" Mrs. Nangle appears to have understood Mr. Hawkins to mean the intentional cause of these disputes, for she answers, "No, not at all;" but she adds, "Mrs. Tichborne had a great dislike to me, as she had for all the family, but for me more than the rest, because my brother was very fond of me, and used frequently to send for me or call upon me. *Q.* Do you know that there were a very great many unhappy differences between Mrs. Tichborne and your brother?—Yes; it was by no means a happy life. My brother did not like to see me so ill-treated as I was by her." Then I asked this question, "You say that so far as you were individually concerned you had nothing to do with any differences between the husband and the wife, the father and mother of Roger?" and she says, "No farther than this: my brother was very fond of me, and I used to go walking with him on Sundays. I either went to lunch, or after lunch I would walk with him to the church of St. Roch for vespers, and she could not bear to see me there. *Q.* Though it is true you were no party to making differences between them, still you were the occasion of the differences?—I was the occasion of differences, because he used to say, 'Why don't you speak to my sister.' *Q.* You say she had an aversion to the whole of the family?—Yes, but I think I was her pet aversion." It results, therefore, I think, from Mrs. Nangle's evidence, that she was the cause of bickering between the husband and wife, not by her fault, for Mr. Tichborne, in his letters, exonerates her from any fault whatever, but by reason of the jealous temper of Lady Tichborne and her dislike of her husband's relations. But,

it may be asked, how would the defendant, if he were not Roger, become acquainted with the fact? That would be, I think, a matter easy of solution. Mrs. Nangle, when she came down with the party to Croydon, denounced him as not being the true Roger. Of course that would be made known to Lady Tichborne, who was staying in the house, and would provoke observations from her, already disposed, no doubt, to speak in a disparaging manner of Mrs. Nangle as a person who had been the cause of disputes and differences between herself and her husband. That would offer an easy explanation, supposing the knowledge was not the result of the defendant's own original knowledge.

We thus see, when we look at this matter of the friends and relations, and the associates and playmates in Paris, that with the exception of knowing that M. Chatillon had been his tutor, the defendant was in the first instance totally at fault, and could give no answer at all to Mr. Chapman Barber on the subject; but afterwards, when Mr. Serjeant Ballantine was re-examining him, a couple of days later, he recollected the name of Mr. Turville at Paris, and of Talbot Constable as the boy with whom he associated, but he does not even then recollect the name of any of the Paris friends of the family, whose names I have enumerated. He remembers there was a friend, a Spanish gentleman, but he does not know his name. He failed to recollect the Nangles, his relations and associates and playmates, although they were resident in Paris all the time Roger was there, till he finally left. Even on the trial, when examined on the subject of friends and relations in Paris, he totally forgot M. de Mandreville; he says, he does not know who he was; he has no knowledge even of his name. The same thing happened on the interview with Mr. Danby Seymour, who put M. de Mandreville expressly to him. When asked about the de Brimonts, he remembers the members of the family, but he makes the great mistake of supposing that they were relations of his mother's, and represents old M. de Brimont as having been called her uncle. The mistake was a natural one for him to fall into, because their name being French, and the mother being a French woman, it was natural to jump to the conclusion, that if they were relations at all, they must be relations of the mother. Lady Tichborne may have spoken of them and may not have sufficiently explained their position relatively to herself. On the other hand, it is just possible that Roger himself may have fallen into some such mistake, and knowing that this family was a French family and his mother a French woman, the matter not having been thoroughly explained to him, may have thought they were relations of his mother's. So much for the subject of the friends and acquaintances.

Next to the friends and acquaintances, the old servants become a

subject of consideration. You could not expect anyone to recollect all the servants who may have passed through a family during the period of his boyhood; no one could be expected to remember that; but supposing there was an old servant in the family, who had been there from the time a person was a child in arms until he reached sixteen or seventeen years of age, would you expect him in after-life to remember such a one? Now, there was such a man in Mr. James Tichborne's family, and that was Gossein, who entered his service in 1830, when Roger was a child in the nurse's arms, and who remained in it until 1844, a period of fourteen years; so that he saw Roger grow up from the earliest childhood to the age of fifteen or sixteen. He was the personal and confidential servant of Mr. James Tichborne, and was in constant attendance on father and son to the time Roger came to fifteen years of age. The defendant was consequently asked whether he knew M. Gossein: "Did you say you did know Monsieur Gossein, or that you did not know Monsieur Gossein?—No, I did not say I did not know him. Q. Did you say you did or did not?—No, I fancy the name sounds familiar to me, but I can't remember who he was. Q. Was M. Gossein, whose name you seem to have heard, and whom you don't think you know, for many years the confidential valet of Mr. James Tichborne, the father of Roger Charles Tichborne, and did he remain his confidential valet until Roger Charles Tichborne left Europe for America—from 1829, the day you were born, till 1845?" Well, the question was not quite accurate, because Gossein was not the valet of Mr. James Tichborne from 1829 till 1845, nor was that the date when Roger left Europe for America. The question, therefore, was not accurately framed, but there is quite sufficient in it to make the answer of the defendant an inaccurate answer; for he answers the whole question, namely, whether this man was confidential valet from 1829 to 1845, though it ought to have been put as from 1830 to 1844. He answers, "I say it is false." Then LORD CHIEF JUSTICE BOVILL interposes: "Had your father a valet?—He had. Q. What was his name?—I don't remember his name, but it was not that. He had two or three, so it could not have been the one. The SOLICITOR-GENERAL: As I understood you to say, you did not know such a person as M. Gossein in your father's service for twenty years?" That is a mistake again; it was not twenty years but fourteen; however, he answers, "No, certainly not. Q. Not at all, in any capacity?—I don't remember the name at all." So that there is a total absence of any knowledge of a man who was in the father's service for fourteen years, up to the time when Roger was a boy of fifteen. The other servant was Burdon. When that name was put to the defendant, he said he remembered Burdon as having been in the service; but Burdon he then knew from having met him prior to



this examination, as we know he did at Croydon. He would know from that, if he did not know it before, that William Burdon had been in the service of his father; and we must take it with this qualification, that when he saw him he did not know anything about him; he mistook him for one of the Seymours; therefore he had no personal knowledge of the man, though on cross-examination on this occasion he says that Burdon was the valet of his father.

Now, the next thing a man would be expected to recollect of his boyish life, if he had gone to school and remained there till fifteen, sixteen, or seventeen, would be the names of some of his masters. I do not say that where it is a school at which there are a great many masters, a boy would remember every one, but he certainly would remember some of those who were his instructors. There are none of us, I should think, but can carry our recollection back to old schooldays, and remember some, at all events, of the masters under whom we were. We may not remember them all, if there were changes amongst them, but there are some of whom the recollection remains. But the observation of course becomes very much stronger when you are dealing with the case of a boy who has been educated at home, and who has had only a single master at a time, by whom his education was conducted; and if such single masters remained with him for any considerable period, it would seem impossible that he should afterwards forget who they were. Now, just let us see who the masters and instructors of Roger Tichborne were. First, there was Chatillon, who remained with him until 1840, at which time Roger would be eleven years old. Chatillon gave it up in despair, because he found he could not get on, owing to the constant interference of Lady Tichborne, and the worry she caused him. Then came Laforit, who seems to have given the thing up after a very short time. Then there was the Abbé Salis, who took the boy in hand until they could get another tutor for him. Then Jolivalt came. But between the time when Chatillon had him under his charge and before the next tutor came, they tried the experiment of sending him to school. His father was extremely anxious that he should be sent to England to be educated, as he ought to have been, but the mother would not hear of it, or indeed hear of his going to school at all, so far as she was concerned, but they compromised the matter by sending him to a French school, where she would have him under her supervision, instead of his coming to England and being intrusted to members of her husband's family; and accordingly, he was sent to the school of M. Dupanloup, the now bishop of Orleans, but that only lasted a couple of weeks, as the mother would insist on interfering. She wanted to have him freed from the ordinary rules and discipline of the school, whereupon M. Dupanloup said, you had better take him away, and he was taken away accordingly. Now what

would you expect a boy who had thus passed through the hands of so small a number of tutors to remember of them? Suppose a boy has a tutor, or a girl a governess, either residing in the house or coming day after day for four or five years or more, and then that tutor or governess is changed, and there comes another, who is also for several years either permanently established in the house, or in the daily habit of coming there, would you expect that either of them would be forgotten? But supposing either of them should be forgotten in afterlife, which of them should you expect would be obliterated from the memory, the first or the last? The defendant says he recollects M. Chatillon—he saw him in Paris, and would there become acquainted with the fact that Chatillon had been the first tutor—or, if he is Roger, having his recollection revived, he knows Chatillon was his tutor—but he totally forgets that he ever had any other tutor at all. That strikes me as very strange. When before Mr. Roupell, he was asked who was his tutor while at Paris, and he says “M. Chatillon.” “Was he your tutor up to the end of your stay in Paris?—Yes. Q. Did he reside in the house with you, or elsewhere?—No, he did not reside in the house; I think not.” He is right there, Chatillon used to come the first thing in the morning and go away the last thing at night. “Had you any other instructor up to the time when M. Chatillon came?—I do not remember. Q. How old were you when he became your tutor?—Well, I cannot say exactly. Q. Give me some idea?—You want me to guess, perhaps? Q. No, I want you to state the fact?—I tell you I cannot say. Q. Were you seven?—I tell you I cannot say what age I was. Q. Were you seven?—I tell you I cannot say. Q. Were you seven?—I tell you I cannot tell you what age I was, because I do not remember. Q. Then I will ask you were you eight?—I do not remember. Q. Were you nine?—I do not remember; it must have been previous to that, I think.” Now comes a pertinent and very important question: “Was he your tutor during the whole of the time from that time till you left Paris?—Yes, pretty nearly; I cannot say the whole of the time.” Then the Examiner takes down, “He was my tutor the whole of the time I was in Paris.” Then the witness says, “He asked me if he was——.” Then the question is repeated, and the answer is to be noted. “Was he your tutor up to the end of your stay in Paris?—Yes.” On the trial he deliberately repeats the same thing. He was asked by Mr. Giffard, on the examination-in-chief: “Do you remember how old you were when Chatillon first came to teach you?—I should think it would be between nine and ten. Q. How long did Chatillon continue to teach you?—Until the year 1845. I am not certain within a year. Q. Now, besides learning whatever you learned from Chatillon, did you learn anything else?—

From Chatillon? No. *Q.* Any one else besides Chatillon?—No, not in France.” Nothing can be more precise and positive than that statement. Laforit and Jolivalt, the latter having been his tutor for three years and upwards—are thus wholly unknown.

But, between Chatillon and the other tutors there intervened the going to M. Dupanloup’s school. But the defendant is positive that he never went there. Having said this, he is asked by the Solicitor-General, “Would you be surprised to find that Roger Charles Tichborne went to school with M. Dupanloup in Paris?—I told you I never went to any school until I went to Stonhurst. *Q.* That when the Bishop of Orleans was a teacher in Paris, and kept a school, Roger Tichborne went to school there?—I did nothing of the kind. I am sure I never went to school there at all. I say it is false.” And, as though this were not enough, Mr. Serjeant Ballantine comes back to the subject on re-examination, and ties his client down still more closely to what he had said: “You have been asked several questions as to your education in Paris down to the time you left and were sent to Stonhurst?—Yes. *Q.* You have had abundant time to consider since the time you were asked those questions: were you, in point of fact, sent to any school whatever during the whole of that period?—No, none whatever. *Q.* Have you directed your attention to the question put about the Abbé Dupanloup as to whether or not you were at school with him?—I have. *Q.* And you are certain you were not?—No; my cousin Roger Brimont was.”—That name, I think, is wrong. M. de Brimont told us it was Anatole de Brimont, who went to that school.—“*Q.* You are quite certain you were not?—Yes. You adhere practically to the answer you gave to the Solicitor-General?—Yes, it is so. *Q.* That you were not at any school?—No; I am not speaking as regards going to a dancing academy, or anything of that kind, but I was at no regular school for the purpose of learning reading, writing, or ciphering, or anything of that sort.” Nothing can be more positive than this statement, that he never was at the school of M. Dupanloup at all. He states that explicitly in his examination and cross-examination, and after full opportunity and consideration he adheres to it, and swears it most positively and distinctly when he is re-examined by his own counsel. Gentlemen, I do not suppose there can be any doubt about the fact that Roger did go to M. Dupanloup’s school, and was taken away after he had been there a fortnight in consequence of interference on the part of his mother. It is proved by every one of the French witnesses. It is known to the Abbé Salis that he was there; it is known to the Nangles that he was there; it is known to M. Chatillon, who himself took him there; it is known to Gossein, who fetched him away; it is known to all the Paris witnesses, and unless these witnesses are in a con-



spiracy to tell you this fact, when in truth it had no existence, it is one of the things established in this case beyond the possibility of dispute. Then comes the question, is it a thing which, if it once happened, a person could afterwards forget? Just consider what first going to school is. A boy is taken from the quiet of home, from his mother's apron-strings, and suddenly plunged into a new world, a new phase of existence; he finds himself surrounded by a number of other boys; there is the noise that goes on amongst boys when together; he sees new faces and companions; it takes him some time to find his place or level amongst them, the whole is a new world to him. He may be taken away speedily, as was the case here, but would he afterwards forget being at school, however short the time, in one of those large institutions? That is a matter upon which you must exercise your own common sense and form your own judgment.

After leaving Mons. Dupanloup's he is taken back home, and we come to the other tutors; and here again we may be quite certain that he had other tutors. We had a body of evidence on that point also, and we know there was a second tutor, whose name was Jolivalt, though it has been sometimes pronounced Jolivet. This man was his tutor for three or four years, and a very bad tutor he proved; the father, in writing to his wife, speaks of him afterwards as "that scoundrel Jolivalt." He took the boy about to billiard-rooms and cafés instead of instructing him; but that he had this tutor Jolivalt, I think it would be insulting your understanding in any way to labour; you must take that as proved, I think, by the whole body of the French witnesses. Then what says the defendant? He does not even know the name, and when it is put to him he imagines they are speaking of a boy whom he says M. Chatillon, when going out walking, used to take as Roger's companion. Chatillon, indeed, says there was no boy of the sort. There was a boy Mrs. Tichborne engaged as a sort of half-companion for Roger and half-servant about the house, but there was no boy he took out walking; therefore, that too is a mistake. It is true the name was put to the defendant as "Jolivet," but the name of Jolivet is almost what we call *idem sonans* with Jolivalt, and would bring back the name to the mind of anyone who had known him; but the defendant wholly ignored him, and said Chatillon was throughout his only tutor. Then the observation I made just now applies, if a man had had as a boy two tutors to instruct or superintend him, and afterwards forgot either of them, which would you expect him to forget, the earliest or the latest? If the memory becomes so confused as not to retain a recollection of the two, which do you think most likely—that the first would merge in the second, or that the second would merge in the first; especially when the second was a person with whom the associations had been more pleasant,

from his having taken him about to places of public resort and amusement? The learned counsel for the defendant says, however, that his recollection of Paris is gone, not putting it merely upon a general failure of memory in other respects, but because he has so painful a recollection of his Paris life that, by an act of the will, which it is said the mind is capable of performing, he has determined to exclude the recollection of Paris from his memory, and has succeeded in doing so. I was not at all satisfied, I must say, with the authority which the learned counsel produced for that position. It seemed to me to belong to the region of what I may call nebulous metaphysics. When we are told that you can exclude from your mind at will what it is painful for you to remember, I rather think it is the other way, and that although the will may have something to do with the memory, painful reminiscences do not admit of being blotted out and obliterated in that easy way. I believe it is quite the reverse, and that the intensity of the emotions which particular events have created in the mind will baffle all exertions of the will to suppress their remembrance when by the association of thought memory recalls them. But what was there in respect to the tutors that Roger should desire to efface? I could understand the observation as regards the scenes which he had witnessed between his father and mother; the domestic discord, the strife, the intemperate language, the violence—those things he might well desire to shut out; but the recollections of his tutors were anything but unpleasant. Chatillon had been the kindest friend possible; Jolivalt was a man who had taken him to places of amusement and recreation. Why should he desire to banish the recollection of these people? The explanation does not appear to me at all sound or satisfactory. His memory, of course, may have failed. The learned counsel has elsewhere said that his brain is disordered and his memory affected in consequence of his former life. You must judge of that from what you have seen or heard; but as to his shutting out and forgetting Jolivalt because he had made up his mind to recollect nothing about Paris, I must say it seems to me a most untenable position, and one which it was really idle to put forward.

Next comes the inquiry as to what he learned at Paris. Having said before Mr. Roupell that Chatillon had been his only tutor, he is asked, "What did he teach you?—He taught me to read and write. Q. In French?—Yes. Q. Did he teach you in Latin?—Yes, I think so. By the EXAMINER: You think he taught you Latin?—Yes, a little. Mr. CHAPMAN BARBER: Did he teach you any Greek?—Really I do not remember"—Gentlemen, I doubt very much whether Roger ever learned the first letter of the Greek alphabet—"Did he teach you any mathematics?—Yes, of course; I received general school education. Q. But I want to know parti-

cularly what he taught you?—If you ask me the question at once I will answer you. *Q.* Do you remember any of the Latin books you read?—No, I do not. *Q.* I suppose he taught you arithmetic?—Yes. *Q.* Did he teach you algebra?—Well, I really do not remember what he did teach me.” This having been read to him on his cross-examination on the trial, he is asked to name any book he read with Chatillon, especially any Latin or Greek book, and he says “he did not commence Latin or Greek before he got to Stonyhurst.” You recollect the Abbé Salis told us Roger used to translate with him the Scripture History, which was in Latin, so that answer cannot be correct. He says, “I merely had a common school education—reading, writing, grammar, arithmetic, as far as division, and geography.” He is then asked by the Solicitor-General, “Could you give me—it is not a very extravagant request—could you give me the name of any one single book that he ever used with you?—No. *Q.* Did you read any History of France, or History of England?—No, I do not remember the name of any one of them. *Q.* You do not remember the name? Did you read any?—I read some—so many—*Q.* ‘Probably I read something?’—I did not say that. The SOLICITOR-GENERAL: I beg your pardon. A JUROR: ‘So many.’ The WITNESS: I read many different books. The SOLICITOR-GENERAL: Well, cannot you give us the name of one? It is not a very extravagant request?—You seem anxious for it, but I really cannot remember just at this moment. *Q.* You cannot give me one?—No.” On re-examination my Brother Ballantine takes him up in this way: “Now we understand that Chatillon was the person who had the care of your education?—Yes. *Q.* Had you any regular hours with him, or any regular course of studies?—We used to have a couple of hours in the morning and a couple of hours in the afternoon. *Q.* What did you learn from him?—I do not know what I learnt from him. *Q.* Did you learn English?—No. *Q.* Did you learn Latin?—No. *Q.* Did you learn Greek?—No. *Q.* Algebra or mathematics?—No. *Q.* Having exhausted all those, will you tell me what instruction Chatillon imparted to you?—It was principally reading and writing. *Q.* Do you mean reading and writing in French?—Yes. *Q.* But no information whatever in the classics?” Then comes this singular answer. “No, not even ciphering”—as if that formed part of the classics. These answers, you will observe, are contrary to what he had stated in the previous examination when questioned by Mr. Barber. There he said that Chatillon had taught him a little Latin, arithmetic, and mathematics; he did not remember whether any Greek.

Gentlemen, another thing I apprehend you would expect a man to recollect, who had lived in a given town up to the age of sixteen or seventeen, would be the residences of his parents, with whom he had



lived up to that time. If there had been a rapid succession of them, I do not know that you would expect him to recollect all, but you would expect that he should have knowledge of some. Try it by yourselves. Where do you first recollect yourselves? what changes, if any, took place in the residences of your father or mother? where do you recollect yourselves up to the age of 6, 8, 9, 10, or 12? when you became 14, 15, or 16 do you fail to remember the house in which your father lived, and in which you were brought up? Then say whether you think it is reasonable to expect from a man who says, "I am prepared to show by my recollection of the life of a given individual that I am that individual"—whether it is fair to expect that he should have knowledge upon this particular head. I know of no other way in which that question can be solved than by each of us asking himself what is his individual recollection on this point—whether if he had been questioned as to that recollection, he should have been able to answer. You may thus form a judgment as to how far the inquiry may be applied as a fair test of his identity? I will tell you what the residences were. At the time of Roger's birth, the father and mother lived in the Rue de la Ferme des Mathurins, commonly called the Rue de la Ferme. In 1833 they changed to the Rue Neuve des Mathurins, which is in the immediate neighbourhood. In 1835 they went to the Rue Caumartin; and from there, in 1837, to the Rue St. Honoré, where they remained till 1845, a period of eight years. Then they went to the Rue Neuve du Luxembourg, where they remained until the year 1848, when we find them in the Rue Duphot. They stayed there only a few months, and at the end of the year 1848 they went to the Rue Castiglione, and remained there till the end of the year 1850. We have a letter from Roger to his mother, of the 4th of August in that year, in which he addresses her at the Rue Castiglione. At the commencement of 1851 they removed to the Rue des Pyramides. This name must be observed, because it was pronounced wrong and written wrong by the defendant. A letter from Roger to his father of the 3rd of February, 1851, is addressed to him at the Rue des Pyramides; and there they remained all through 1851 and 1852, and to the end of 1853. They were living there at the time when Roger left Europe, and it was only on the death of Sir Edward Doughty, and Sir James Tichborne succeeding to the title and estates, and their consequently coming to this country, that the residence of Sir James and Lady Tichborne in the Rue des Pyramides was given up.

Let us now see what is the knowledge of the defendant with regard to these residences? On his cross-examination before Mr. Roupell he is asked this question, "You state in your affidavit that you were born in Paris?—Yes. Q. Where were you residing in Paris when you first remember?" Mr. Serjeant Ballantine interposes, "You

must not take it that he positively swears he was born in Paris.

MR. C. BARBER: He states so in his affidavit. MR. SERJT. BALLANTINE: I suppose you do not remember that event?—No, I do not.” Of course no one remembers the fact of his birth, and therefore the place of his birth; but I should think there are very few of us, unless a man has been leading a life of vagrancy, who does not know from his parents and relations where he was born, and does not know it as a fact, just as well as he knows every other event of his life. Then Mr. Chapman Barber very properly alters the question, and says, “Where were you residing in Paris when you can first remember?—In the Rue de Madeleine.” Now in the first place there is no Rue de Madeleine; it is the Rue de *la* Madeleine, and no Frenchman could have made such a mistake; but if Roger had forgotten all his French, and all his French associations, he might possibly have made that mistake, but one could not well have expected him to make such a mistake as to say that his parents ever lived in the Rue de la Madeleine, for most assuredly they never lived there at all. Then why should the defendant have pitched on the Rue de la Madeleine? The only solution I can find on turning the question over in my mind is that he found Lady Tichborne living in the Place de la Madeleine, and consequently, on the street he first remembered being inquired about, the first thing that occurred to his mind was the Rue de la Madeleine. Certain it is that the Tichbornes never did live there. Then Mr. Chapman Barber goes on, “You continued to reside in Paris, as you have stated, until you were fifteen or sixteen?—Yes”—that is in his affidavit; in Australia he had said till he was eleven or twelve—“Did you continue to reside in the same house?—No. Q. Can you mention where else you resided in Paris?—No, I cannot; I do not remember the exact places. Q. Can you mention any one of them?—The EXAMINER: Wait a moment—you say you were fifteen years in Paris?—Yes, I remained in Paris until I was fifteen years of age. Q. But you cannot exactly remember what other houses you lived in besides the house in the Rue de Madeleine?—No. MR. CHAPMAN BARBER: You surely must remember?—I can tell you one, and if I tell you one you will want me to tell you twenty; so you go on.” Then Mr. Serjeant Ballantine interposes, “Try if you can satisfy the gentleman;” and the answer is, “the Rue St. Honoré, near the Louvre. MR. CHAPMAN BARBER: Do you remember the number?—No, I do not remember the number.” Now comes this important question, “Was that the last residence you were at in Paris?—I think it was, to the best of my remembrance, but I will not be certain of that. The EXAMINER: ‘I think, but I will not be certain, that the house in the Rue St. Honoré was’”—and then the witness repeats—“was the last house where I resided in Paris.” Then Mr. Serjeant Ballantine, thinking there is nothing like being

particular, says, "Near the Louvre." MR. BARBER: He said in the "Rue St. Honoré, near the Louvre." Now that is altogether wrong. They never lived in the Rue St. Honoré after the year 1835; that is the last time of their residence in that street. They lived afterwards, as I have told you, for two years in the Rue du Luxembourg and in the Rue Castiglione, and after that for two and a half years in the Rue des Pyramides. Now, Lady Tichborne was, as I have said, present at this examination, and she must have been aware, of course, of these mistakes, and as her opinion was that all the mistakes made by the defendant were due to the shattered state of his memory, and his "confusing everything in his head as in a dream," she would probably tell him that he had made mistakes, and point them out to him; and accordingly in 1871, when he is examined on the trial, he is better prepared, and we find that the Rue de la Madeleine is altogether dropped. On his examination-in-chief Mr. Giffard asks him, "Where were you living the first time you have any distinct remembrance?—In Paris. Q. Do you remember in what street in Paris?—The Rue de Ferme," which, so far as we can make out from an observation made by the Solicitor-General afterwards, he seems at first to have pronounced rather shorter than a Frenchman would pronounce it; he appears to have pronounced it at first Rue de Femme or Fum. Then the Chief Justice says, "What was the second word?—Ferme. Q. There are three words?—Rue de Ferme. Q. Are there two or three words?—It is Rue de Ferme; they both run into the one. Q. Is it three words or two words that you speak?—Three words, but pronounced two. Q. Would you mind pronouncing each word so that I may write it down?—The first word 'Rue.' Q. What next?—'De.' Q. How do you spell it?—D-e: I do not understand your Lordship; I will give any explanation you wish." "I have a reason," says the Judge, "and want to take it from you without the assistance of anybody. There are three words you mentioned, and the first was 'Rue?'—Just so. Q. The second?—De Ferme. Q. Those are two, if I understand, or is it the second?—'De.' Q. How do you spell it?—D-e. Q. Now the next word?—Ferme. Q. Now see if I have it right?" and he repeats it. "I believe that is right. Q. Is that what you mean to say?—Yes." Then Mr. Giffard goes on: "Now what was the first thing you have any remembrance of in Paris, when living there, in the Rue de Ferme?—I think my sister's death. Q. What sister was that?—Alice. Q. Do you remember any circumstance about that connected with your mother?—I remember my mother was ill about it. Q. Do you remember how old your brother Alfred was at that time?—It was just after his birth. Q. Just after his birth?—Yes, I should think; I cannot exactly state to a week, but two or three weeks, or three or four



weeks, or something of that sort. *Q.* What was the difference in point of age between you and Alfred?—Really I do not know, about nine or ten years. I cannot tell you exactly.” Now as to this he is in some respects right, and in others wrong. His sister Alice’s death did immediately precede the birth of his brother Alfred, and his brother Alfred was within a reasonable distance of what he said; he was, I think, just ten years younger than himself; but in saying that his sister died, or that the brother was born, in the Rue de la Ferme, he was entirely wrong; the two things happened when they had gone sometime afterwards to reside in 1837 in the Rue St. Honoré. And with regard to the Rue de Ferme, I have already pointed out that it is a mistake to call it so; it is Rue de la Ferme; and a Frenchman would certainly not make the mistake of leaving out the article, which is essential, but a foreigner might; and if Roger Tichborne had become so entirely un-French, if I may coin a word, as to have forgotten everything connected with his French life, he might have said that. He is next asked, “Do you remember where you next went to in Paris, after having lived in the Rue de Ferme?—No, I cannot tell. *Q.* Do you remember any person being intrusted with your education or the care of you?—Yes. *Q.* Who was it?—Chatillon. *Q.* Who was Chatillon?—He was a tutor of mine. *Q.* How used he to take care of you? Used you to go about with him, or used he to come to your house, or not?—He used to come to the house; I also went out with him. *Q.* Do you remember whether there was any one else whom Chatillon used to take out with you?—Yes, there was a little boy he used to bring out sometimes.” Now comes the important part: “Where were you living at the time Chatillon used to come to you?—In several places—two or three different places. *Q.* Do you remember the names of them?—The Rue de Pyramide. **THE LORD CHIEF JUSTICE:** Is it inconvenient to you to spell it?—I do not know that I can spell it. *Q.* You drop your voice so?—Rue de Pyramide; it is plain enough. *Q.* I cannot hear what the word is, so as to write down anything intelligible. **MR. GIFFARD:** I can hear, but after what your Lordship has said, I do not choose to repeat it. **THE LORD CHIEF JUSTICE BOVILL:** It is quite clear he can raise his voice occasionally. I have heard other parts of his evidence quite distinctly; therefore he can raise his voice to pronounce it. If you will be kind enough to raise your voice as high as when giving the rest of your evidence, so as to give me the word distinctly, I can write it down?—Rue de Pyramide. *Q.* Rue?—De Pyramide. *Q.* Is it one word or two, do you say?—Two. *Q.* Then what is the second?—De Pyramide. *Q.* As you pronounce it, it seems to me to be two words?—It was three altogether. *Q.* The first is Rue?—Yes. *Q.* What is the second?—De. *Q.* How do you spell it?—

D-e. Q. Will you speak it in English?—I am spelling it in English, my Lord; I believe it is only two letters—D-e. Q. Now, the next word?—Pyramide. Q. All that reaches me is ‘Pyramy.’ Is Pyramide what you say?—Yes, it is. The LORD CHIEF JUSTICE: I do not know whether you heard him, gentlemen. The JURY: It is ‘Pyramide’ we have understood him to say?—Yes. The LORD CHIEF JUSTICE: That he seems to say, but it has not reached me. Will you be kind enough to say it again?—Yes, five hundred times, if your Lordship wishes it. Rue de Pyramide. Q. Will you spell it? Mr. GIFFARD: He has already expressed his own doubt whether he can. The LORD CHIEF JUSTICE: I have not heard that. Mr. GIFFARD: Yes. Mr. SERJT. BALLANTINE: The expression was ‘I do not know that I can spell it.’ The LORD CHIEF JUSTICE: This is an important part of the case, and I am trying to take a note of the evidence: do I understand you to say you do not know how to spell it?—I would not say I do not know how to spell it, but I might make a mistake, and I do not wish to be laughed at in the whole court. Q. See if I have it right now. ‘I would not say I do not know how to spell it, but I prefer not to do so. I do not wish to be laughed at.’ Mr. GIFFARD: ‘I might make a mistake.’ Now, here again with regard to the name of the street, there is a serious mistake made, so far as French is concerned. There is no Rue de Pyramide in Paris or anywhere else. It is Rue des Pyramides: it is not Pyramide in the singular number, written as the defendant writes it ending with an “e,” but with “es,” thus making it in the plural. It is not Pyramid Street, as we should call it, or the street of the Pyramid, but it is the street of the Pyramids. It was a street built at the time when the Egyptian campaign was a matter of such intense interest to every Frenchman, and when the bulletins of Napoleon, who was at that time in command of the army in Egypt, and his addresses to his army—as when, on the field of battle he reminded his soldiers of how many centuries were looking down upon them from the Pyramids—so powerfully stirred the heart of the French people; and we have here a mistake which, even if he had forgotten all about his French associations, we could hardly have expected Roger to fall into.

Gentlemen, I feel bound to point out that the statement of the defendant that he had had Chatillon for a tutor when living in the Rue des Pyramides was a very serious, and you may possibly think, a fatal mistake. The Rue des Pyramides was the street where the father and mother lived last during the time Roger was in the army, and where he was in the habit of going to see them in the years 1851–52. It was the place where he saw them last, and where he took his final leave of them before departing for South America; while Chatillon was never Roger’s tutor after they left the Rue

St. Honoré, a street in which they had not lived since the year 1835, seven or eight years before; nay, more, Chatillon ceased to be tutor in 1840, and Sir James and Lady Tichborne did not reside in the Rue des Pyramides until 1851; so that there had been that long interval of eleven years between the time of Chatillon's tutorship and the time of their residence there. Here, therefore, we have a very serious error.

When the defendant is cross-examined about these things, the confusion becomes still more striking. His statement on his examination before Mr. Roupell is read to him on cross-examination, and then he is asked this: "Now, what made you say on the 31st July, 1867, the first place you remembered was the Rue de Madeleine?—I spoke from the impression then on my mind, I suppose. Q. At the time you were examined, then, that was the impression on your mind, was it?—It must have been. Q. I do not ask what must have been, but was it?—I should say it was. Q. And when you were examined by my learned friend, Mr. Giffard, the impression on your mind was the Rue de Ferme, is that so?—Yes, it must have been. Q. They cannot both be correct; which, to the best of your recollection, is correct, or either?—I could not say, I am sure. Q. You cannot recollect now where you were first living?—No, my recollection of Paris is gone. Q. I am afraid I must trouble you to see whether it is entirely gone—sixteen years. Your impression, you know, in 1867 was the Rue de Madeleine; your impression in 1871 was the Rue de Ferme, as you call it. What occurred between 1867 and 1871 to alter your impression?—I cannot tell you, I am sure. Q. That is the only answer I am to have, that you cannot tell which impression is right?—No, I cannot. Q. And you will not swear to either place?—No, I will not swear. Q. Will you swear to any single residence that your father and mother ever had in Paris?—It would be safer not. Q. It would be safer? It is safer not to swear to anything; but I must trouble you. Can't you tell me—sixteen years of your life—a single name? Will not you swear to a single residence of Mr. and Mrs. Tichborne, between 1829, when you were born, and 1845, when you came to England—not one?—I am not going to swear to anything. Q. You can't put me off quite in that way. I am afraid I must ask you again whether you really mean to say that you, a boy of sixteen years of age in the year 1845, cannot tell the jury one single place in Paris for certain, upon your oath, where your alleged father and mother lived?—They lived in the Rue St. Honoré; they lived opposite the Louvre. Q. Will you swear they did?—Yes. Q. You will swear that they lived in the Rue St. Honoré?—Yes. Q. When? I do not ask you the month, I do not ask you the year, but when?—I have no recollection about what year. Q. I have told you I do not ask you



the month, I do not even ask you the year; you hear what I say?—Yes. Q. I ask you about what period of those sixteen years of your life will you swear that your mother and father, as you call them, lived in Rue St. Honoré?—It was towards the latter part.

Q. Do you mean before or after 1840?—After 1840. Q. After 1840, that you swear?—I will not swear to anything. Q. I thought you would: you will not swear to that?—No. Q. You will not swear even to so much as that, to one single place where your father and mother lived between your ages of eleven and sixteen?—No.

Q. Can you recollect whereabouts in the Rue St. Honoré, which possibly may be familiar to some of the jury, though you will not swear to it?—Pretty near the Louvre, near the Hotel du Louvre.

Q. Near the Louvre? A JUROR: The Hotel du Louvre?—Opposite the Louvre. The SOLICITOR-GENERAL: Do you mean the Louvre or the Hotel du Louvre?—The Hotel du Louvre.

Q. Opposite the Hotel du Louvre?—Opposite the Hotel du Louvre.

Q. Could you see the Hotel du Louvre from your windows?—Yes.

Q. Between 1840 and 1850?—I have no recollection of what year.

Q. You told me you left Paris in 1845. You never lived in Paris after?—Not that I am aware; No. Q. You told me to the best of your belief it was after 1840. Do you mean to say you could see the Hotel du Louvre from your windows?—Yes. Q. Do you mean to say the Hotel du Louvre, one brick of it, was built before 1845?

—I don't know whether the Louvre was built, I am sure. Q. Will you swear that you saw the Hotel du Louvre from the windows of your father and mother's house in the Rue St. Honoré before you left Paris?—I did not say before I left Paris: You asked me if it was after 1845, and I told you I believe it was. Q. The jury will judge: I carefully told you that you left Paris in 1845?—I am aware of that. Q. I told you and you assented: I asked you before that whether it was after 1840. You told me you believed it to be after 1840. You then said you saw the Hotel du Louvre from the windows of your father's house, and now, when I ask you whether a single brick of it was built, you say you did not say before 1845.

That is your answer, is it?—That is my answer."

Gentlemen, it was of course utter nonsense to talk about having seen the Hotel du Louvre before 1845. It was not built until after the accession of the late Emperor. The cross-examination continues:

"Did you ever live in any house—did your so-called father and mother ever live in any house, at any time, from which, on any occasion, you ever saw the Hotel du Louvre?—Yes. Q. Will you swear?—Yes. Q. That you will swear?—No, I will not swear I tell you, I will not swear; my recollection is so bad."

That is the effect of the cross-examination being prolonged beyond the answer with which the interrogator might have been satisfied if he had no ulterior purpose.

Twice over he had sworn they could see the Hotel du Louvre from the windows. A third time he is asked, and he says, "I will not swear; my recollection is so bad. Q. But I think just now you did swear you had seen the Hotel du Louvre from your windows. The Hotel du Louvre is as big as St. Paul's very nearly. You can't forget that. Surely you can tell me whether you saw one of the biggest hotels in creation from the windows of your father and mother's house?—I believe I did. Q. Surely you can remember that?—I will not swear to it at all. Q. Why will not you swear?—I will not swear, because I know you are trying to confuse me, and my head is in a very queer state. Q. You say that continually, and you provoke me to make retorts which, I trust, I shall not make; but excuse me advising you, the jury will hear whether I am trying to confuse you—you had better take care what you say. If questions can be put clearer than I put them, I cannot put them clearer. Do not say I try to confuse you. Now, you have stated to my learned friend here—not to Mr. Roupell in Chancery—that your father and mother had at one time lived in the Rue de Peramy, as you call it, by which I suppose you mean Pyramides?—Yes. Q. Is it the same thing, or a different street?—Yes. Q. The Rue des Pyramides; when was that?—I don't recollect what year it was in. Q. I don't ask you the year. Give me a year or two, or three years, in which you say you lived in the Rue des Pyramides. You told my friend, you know—let me remind you, this is Mr. Giffard, who I do not suppose was trying to confuse you, whatever I am doing—'Where were you living at the time Chatillon used to come to you?—In several places, two or three different places. Q. Do you remember the names of them?—The Rue de Pyramide.' Now, will you swear that M. Chatillon ever came to you in the Rue des Pyramides, and ever took you out when you were living in the Rue des Pyramides?" The Solicitor-General was not satisfied with the positive statement the defendant had made on the former occasion, but he seeks to worry him again about it. The result is that the defendant now says he will not swear to that which before he had distinctly sworn to. "No, I will not swear that. Q. Just attend." Then he repeats what the defendant had said on the prior examination. "'Where were you living when Chatillon used to come to you?—In several places, two or three different places. Q. Do you remember the names of them?' Then you say five or six times over, 'Rue des Pyramides;' I will not try to repeat your pronunciation, but that is the name of the street, I believe. Now, will you swear that Chatillon ever came to you, or had anything whatever to do with you in the Rue des Pyramides?—No, I will not swear. Q. What did you mean by telling Mr. Giffard so?—What did I mean? I meant what I said. Q. I really do not know what you

do mean. Chatillon, according to you, was your own tutor, who used to take you out to walk, and that you said to Mr. Giffard happened when you lived, amongst other places, in the Rue des Pyramides. You have sworn that already. Now, will you swear it on consideration? Will you repeat your oath?—No, I will not.

Q. That Chatillon ever came to you while Mr. and Mrs. Tiebhorne were living in the Rue des Pyramides?—No, I will not swear.

Q. But why in the one single place that you gave, the one particular to which you condescended with my learned friend, why will you not stick to it now?—Observe the sagacity of the answer, which throws light on many other answers given in other parts of the cross-examination—“Because you imply it is wrong, and therefore I am not going to swear it.

Q. I imply nothing whatever. I am cross-examining you to test your memory. I imply nothing whatever, and beg you not to suppose that I do. Will you swear it?—No, I will not. Q. Why not?—Because my recollection is bad. Q. Then what made you swear it before?—Because I was under the impression that it was so. Q. Are you still under the impression?—No, I am not.

Q. I have changed your impression?—Well, I think it was in after-life. Q. You think what was in afterlife?—That my father was there after that. Q. After what?—After Chatillon's time. Q. You went there after you came to England?—I think so.”

Now, then, as it stood on his examination-in-chief, his leading counsel then questioning him from his own instructions, he represents that it was while living in the Rue des Pyramides that Chatillon attended him as tutor. That was impossible. This the Solicitor-General, having I suppose some ulterior object, disturbs by the cross-examination. Then the defendant says he will not swear to it, the questions having conveyed to his mind by implication that he was wrong. The observation naturally occurs that his knowledge could not have been very perfect, or he would not have fallen into that discrepancy.

The Solicitor-General further asks: “Where is the Rue de Ferme? I really would not imitate your pronunciation, but I have a reason for asking where it is?—In the outskirts of Paris. Q. In the outskirts of Paris?—It runs round the outskirts of Paris.” What he can have meant by this I am at a loss to conceive. Then there is a long cross-examination about which part of Paris, and on which side of the Seine it is: it is too long to follow, and I pass it by.

We have here a series of mistakes to which it is necessary to call attention. First, the Rue de la Madeleine, the street mentioned by him as the first he recollected, was a street in which his parents never resided at all. He is right in speaking afterwards of the Rue de la Ferme as the first residence, because he was born in it. That would



be conveyed to his mind by seeing the certificate of baptism, produced on the former trial, in which the residence of the parents is stated as being in the Rue de la Ferme. He is altogether wrong in saying his sister died there. She died in the Rue St. Honoré. He is right as to the Rue des Pyramides having been one of the residences, but he is utterly wrong in saying it was a street in which Chatillon ever came to him. It was not inhabited by the parents until Roger was with his regiment in Ireland. He is clearly wrong as to the residence in the Rue St. Honoré being opposite the Louvre, or near the Louvre, or a house from the windows of which the Louvre could have been seen, for the threefold reason that the Hotel du Louvre was not built, and that, according to the Paris witnesses, the site on which it is now built was not visible from the house the parents inhabited in the Rue St. Honoré, and that the house No. 364, at which they lived, is at the opposite end of the street to the Louvre, and there were blocks of buildings at that time which would have prevented the site being seen. To get over this difficulty, two suggestions were made, both of which, I cannot help thinking, were thoroughly dishonest: the first, that there were two residences in the Rue St. Honoré, when, in point of fact, there never was but one; the second, that there was on the site of the present Hotel du Louvre an older Hotel du Louvre, and that that was the hotel to which the defendant referred. On his re-examination by Serjeant Ballantine, these questions are put: "You mentioned, I think, in your evidence-in-chief, and in cross-examination, two places that you remember to have lived in. One you call the Rue de Ferme?—Yes. Q. And the other the Rue St. Honoré?—No; there were several other places; we lived in the Rue Castiglione." I must observe that mention of the Rue Castiglione is here made for the first time. In the examination-in-chief and cross-examination there is no mention whatever of it; but by the time Serjeant Ballantine comes to the re-examination, the Rue Castiglione is introduced. "Where else?—In the Rue St. Honoré it was, I think. Q. Were you in the same situation in the Rue St. Honoré on both occasions?—No. Q. Different situations?—Yes. Q. On both occasions were you able to see the Hotel du Louvre?—No; only on one occasion." Now, that is introduced for the very first time; and the evidence of the whole body of the Paris witnesses, Chatillon, Gossein, and the rest, shows there was but the one residence, namely, at No. 364, and no second residence; and whoever suggested that, in my opinion, suggested that which they knew to be untrue, and to be neither more nor less than a wicked, downright, deliberate falsehood. There was no second house in that street. There is not the slightest attempt to show that there was; and the evidence abundantly establishes that there was but one house that they ever inhabited in the Rue St. Honoré. Then comes this question:

“ Now, when you speak of seeing the Hotel du Louvre, do you mean the present structure, or the present hotel?—No; it was where the present structure is. Q. Was there then at that time or not, as far as you can recollect, an Hotel du Louvre upon part, at all events, of the ground upon which the present Hotel du Louvre is built?—Yes; exactly so. Q. And was it that to which you referred, when you spoke of the Hotel du Louvre?—Yes; it was to that.”

Now, I need hardly say I am quite sure my Brother Ballantine would not lend himself to a falsehood—would not lend himself to a fraud—but I have no hesitation in saying, and it is my bounden duty to say, it is plain to demonstration that there was here a fraudulent attempt to impose on the jury, and for this reason: no one who attends to the questions of the Solicitor-General and the answers of the defendant can entertain the remotest shadow of a doubt that at the time the cross-examination was going on, the counsel, the witness, the judge, and the jury had the big Hotel du Louvre, as it stands now, in their minds; of that no one who reads the evidence can entertain a single moment's doubt; and, therefore, when the defendant is made to say it was to a second Hotel du Louvre, and to a second house in the Rue St. Honoré inhabited by his parents, opposite the Hotel du Louvre he was referring, I say that was a fraudulent device to get out of the difficulty in which the defendant found himself. Whoever suggested it, whoever lent himself to it knowingly, lent himself to an intentional fabrication and falsehood, and a fraudulent attempt to impose on judge and jury.

Upon the present occasion we have had, not indeed the second residence in the Rue St. Honoré—that has been abandoned—but the second Hotel du Louvre in like manner attempted to be brought forward by questions in cross-examination. But no affirmative evidence whatever of it has been adduced; and all the evidence tends to negative its existence, as well as the possibility of its being seen. Gossein, in his evidence, states that there were blocks of houses which, had it existed, would have prevented its being seen. Gossein, you know, was in the service of Mr. Tichborne nearly the whole time they were residing in the Rue St. Honoré, or until within a very short period of their leaving. He was asked: “ When did the family go to the Rue St. Honoré? In what year?—1837, I think. Q. Were they still living in the Rue St. Honoré when you left them?—Yes. Q. Where did the windows of the room that you slept in look into, the court, or to the street?—The street. Q. From the window of your room, could you see the Louvre?—It was impossible. Q. Could you see the place where the present Grand Hotel du Louvre is?—At that time the Hotel du Louvre was not yet built. Q. Could you see the place where it has since been built?—It was impossible. Q. Why impossible?—Because there is first the Rue Castiglione, then the Rue

Montabond, then the Rue de Rivoli, and then the building of the Tuileries." Then I remembered that the Place du Caroussel used formerly to be encumbered with streets of a very low description as you passed the Place du Caroussel, and I asked the question: "Had the buildings adjoining the Place du Caroussel been removed or not?—They were not yet removed. There was not at that time the Grand Hotel du Louvre, that has been built since. Q. Was there any other Hotel du Louvre visible from the house inhabited by Mr. Tichborne?—In the Rue de Rivoli there was a little hotel, but I do not think it bore the name of the Hotel du Louvre. Q. Was that little hotel visible from the house?—Impossible; you could not see it. Q. There was no old Hotel du Louvre that you know of?—I have never known any other Hotel du Louvre in Paris except the one that was built since the beginning of the Empire."

Then we have the Abbé Salis who lived in the house in question for two years, and although his own window looked the other way, he must have looked out of the Tichborne window scores of times, as he was constantly with them. He is asked, "The house they lived in was 364, Rue St. Honoré. From that house can you see the Louvre—not the Hotel du Louvre, but the Palace of the Louvre?—The Palais du Louvre was hidden by two rows of houses, and it was impossible to see it. Q. Do you happen to know about when the Hotel du Louvre was built in Paris, or when it was opened as a public building in Paris, and as an hotel?—The Hotel du Louvre was built under the Empire. Q. The last Empire?—The last Empire." About that there is no possible doubt. Then follows a long inquiry as to the precise position of the house No. 364, which at last was fixed as being between the Rue Castiglione and the Rue Royale, almost at the other end of the street from that near which the Louvre is situated. Then he is asked, "Can you now, from No. 364, see the Hotel du Louvre." The Hotel du Louvre is, as the Solicitor-General said, with a little hyperbole, nearly as big as St. Paul's. "Can you now, from No. 364, see the Hotel du Louvre?—No, it is impossible. Q. Is not this house 364 at the opposite end of the Rue St. Honoré to which the Hotel du Louvre is?—The Hotel du Louvre is not at all in the same street as that in which was Sir James Tichborne's house." Then the learned counsel for the defendant took an entirely new view, and suggested that at all events from the top of the house you could see the Louvre, as if that was what the defendant had intended to say. What he said was that the house was, to use his own words, "opposite the Louvre," "near the Louvre," which he explained to be the "Hotel du Louvre," and that they could see the Louvre from the windows of the house, that is from the story they occupied. The house was let out in flats, and what he was talking of were the windows of the house, not the top of the house. However, the learned counsel



makes a point of that. “How many flats or stories did that house consist of?—As far as I can remember, and I do not believe I am mistaken, there were four flats or stories. *Q.* Is the house still standing?—That house is still standing just as it was when I lived there. *Q.* Will you swear that the Louvre cannot be seen from the top?—I could not swear that one could not see the Louvre from the fourth story, because I have never been up to the fourth story, but I believe one could not. *Q.* Are you able to say whether there was an old building there called the Hotel du Louvre?—I cannot remember anything in that respect. *Q.* Have the streets of Paris altered very much since 1839?—The St. Honoré quarter has not changed at all. *Q.* Are you quite sure of that?—I am sure of it. At the end towards the markets, it may have perhaps, but I can declare that the Rue St. Honoré has undergone no modification from the Church of St. Roque up to the Rue Royale. *Q.* Was there in front of the house, or within sight of the front of the house, any old hotel of the Louvre?—I do not remember it, and I do not believe it.” Monsicur Chatillon was asked: “Did you, in frequenting this house of Mr. Tichborne in the Rue St. Honoré, know of any old Hotel du Louvre that was visible from the front of that house?—No. *Q.* Can you take on yourself to say that there was no such hotel?—I affirm that I did not know any.” Mr. Alfred Seymour was familiar with Paris, and he knew this house, having constantly been there. He is asked, “You recollect the house and were there?—Yes. *Q.* From that house could the Louvre be seen at all?—No. *Q.* Was there any hotel of that name at that time to your knowledge in existence?—No. The LORD CHIEF JUSTICE: The large hotel, of course, there can be no question about. Mr. HAWKINS: Did you ever hear of any hotel bearing that name until the large hotel was built?—No. *Q.* Your acquaintance with Paris commencing in 1839 or 1840, have you been well acquainted with it from that time to the present?—Yes, I have. *Q.* Your knowledge of Paris commences in 1839 or 1840, and from that time you have had considerable knowledge of it?—Yes.” On cross-examination he is asked: “Are you sufficiently acquainted with Paris in those days to be able to say positively there was not an old Hotel du Louvre?—No, I cannot say positively there was not. *Q.* Do you know whether there was a very extensive look-out on the top of that house in the Rue St. Honoré?—I was never on the top of that house. The LORD CHIEF JUSTICE: Their floor was the first floor?—Their floor was the first floor.” We know the floor they lived on was the first floor. The Abbé Salis lived immediately under them in the entresol.

The result, then, is this, that the defendant was mistaken as to the residences in the Rue St. Honoré and the Rue des Pyramides; and

his mistakes are of a serious character, because, as to the first, the family lived there from 1837 to 1845, a period of eight years, and with it were associated the last recollections of Roger's Parisian life; and as to the Rue des Pyramides, where he at first asserted that Chatillon used to come to teach him, the mistake is remarkable because it was the last residence of the parents, and would be associated with the recollection of his last visits to Paris and the last recollections of his father and mother, whom he left living in that house, when he finally left, at a time when he was twenty-four years of age; and when, therefore, his memory was fully developed and his recollection of the things calculated to make an impression on his mind might be expected to be sufficiently vivid not to be effaced in after years.

I have dealt already with the secular education. Let us now see what are the defendant's recollections on the subject of his religious education. He is asked by whom he was prepared for his first communion. Let us see how the facts stand. We have Father Lefevre, who says this lad was committed to his religious care, as his confessor and spiritual adviser; that he prepared him for his first communion, by imparting to him the elementary knowledge in matters of religion, but that when the time came for his first communion, which is a ceremony in the Roman Catholic Church to which great importance and interest is attached, as he lived at some distance, Roger was committed for his immediate preparation to the Abbé Humbert, who was Vicar of the Church of the Assumption in the Rue St. Honoré, where the first communion took place; but afterwards he regularly confessed to Father Lefevre while he was in Paris. Father Lefevre is asked as to the first communion. "Did you prepare his mind for that ceremony, for that communion?—I did prepare him; I confessed him at least two or three years before. The LORD CHIEF JUSTICE: The question was whether you prepared him for the communion; I did not hear the answer to that?—I prepared him a long while ago for that communion, but it was not I who gave him the actual preparatory exercises for it." As to confession he goes on to say that Roger went to him every two months while he was at Paris, and confessed to him regularly, and afterwards, when he came over on occasional visits to his father and mother, after he had ceased to live at Paris, he never failed to come and see him, and on those occasions confessed to him.

The first communion, as we were informed by the Abbé Salis, may take place at any age between eleven and thirteen, but is rarely deferred after the latter period. The defendant stated that his first communion was when he was from nine to ten years of age.

Now it is an event, I imagine, calculated to make an impression

on a boy or girl, and it would be remembered in afterlife, and the person who prepared one for that first religious ceremony would be likely to be remembered. That it was Father Lefevre in the first place, and then Father Humbert in the second, that prepared Roger Tielborne, the evidence shows. Mrs. Nangle is asked on cross-examination: "Now, you have mentioned Père Lefevre; was it not Père Humbert who prepared him for his first communion?—Père Humbert began him, because it was so much nearer where my brother lived. The Père Humbert belonged to the Madeleine. *Q.* But it was Père Humbert who prepared him first?—Yes. *MR. JUSTICE MELLOR:* Did you say he began to prepare him?—He prepared him for his first communion. *MR. McMAHON:* I understand you to say he did prepare him, and it was after his first communion that Père Lefevre became his confessor?—Yes. *THE LORD CHIEF JUSTICE:* No, Père Humbert prepared him. *MR. McMAHON:* Yes. *THE LORD CHIEF JUSTICE:* Then Père Lefevre, if I understand him, took him up as his confessor after that?—Yes, and friend." In like manner, Miss Nangle's evidence is to this effect: She is asked, "Do you remember his first communion also?—Yes. *Q.* Where did it take place?—At the 'Church of the Assumption.' *Q.* Do you know under whose care he was prepared for the communion?—Yes, the Abbé Humbert, who instructed him; but I believe he confessed to Père Lefevre. *Q.* That is preparatory to the communion?—Yes, and always afterwards to Père Lefevre."

Now what says the defendant about it? He is asked who it was prepared him for his first communion, and he says he does not remember. He is asked where it took place. He says he thinks it was at the Church of the Madeleine. The evidence shows it was at the Church of the Assumption. Mrs. Nangle says she remembers his first communion very well; it was at the Church of the Assumption in the Rue St. Honoré. Miss Nangle says the same thing. The defendant is asked: "Who prepared you?—I do not remember who it was. *Q.* What was the preparation?—The ordinary preparation. *Q.* But you see I do not know, because I do not belong to your communion; what was the preparation? What books were used?—The ordinary prayers and answers. *Q.* Out of what book of prayers?—Out of 'The Garden of the Soul.' *Q.* In French or English?—It is both in French and English too. *Q.* A 'Garden of the Soul' in French, is there?—A translation of it. *Q.* A translation of 'The Garden of the Soul,' in French, is there? Is that a common Roman Catholic book?—'The Garden of the Soul' is. *Q.* I say is the translation a common book?—I think so. *Q.* There is such a thing as a French translation of 'The Garden of the Soul'?—Yes, of course there is. *Q.* Do not say 'of course;' you say there is?—Yes.



*Q.* Do you mean to swear that there is a French translation of the English Roman Catholic book, 'The Garden of the Soul'?—I do not mean to say that it is an English book. *Q.* Is it your notion that 'The Garden of the Soul' is a French book?—There is a book the same as what there is in English. *Q.* There is a book the same as what there is in English?—As what 'The Garden of the Soul' is. *Q.* I want to see that I correctly represent you. There is an English book called 'The Garden of the Soul,' which, though not Roman Catholic, many of us may be aware of; but is there a French translation of 'The Garden of the Soul'?—I believe there is. *Q.* Will you swear there is any such book?—No, I will not. *Q.* Just one word before passing away from it. Do I understand you that your preparation for the first communion was saying some prayers with some religious person, and answering some questions?—It was learning my duty, whatever it was. *Q.* What?—It was learning what I had to go through—what I had to say. *Q.* Learning what you had to go through? I do not quite understand you?—Yes; it consisted of prayers and answers. *Q.* Questions upon what? What were the answers to?—I did not say answers to questions. *Q.* 'I did not say answers to questions;' I beg your pardon; then what do you mean exactly by answers?—Answers to the prayers. *Q.* Then the religious person, whoever it was, said prayers, and you answered him? Is that what you say?—Yes. *Q.* And that was your preparation?—Yes."

Now we had French ecclesiastics here as witnesses, and we inquired as to whether there was any French translation of 'The Garden of the Soul.' 'The Garden of the Soul' is a well-known Roman Catholic book, containing prayers and exercises, and so forth, and there are no doubt corresponding books in French, which French ecclesiastics, instructing young persons with a view to prepare them for their first communion, would use; and there can be very little doubt that amongst the books of Lady Tichborne this English 'Garden of the Soul' was to be found, and we know that there is a French edition of the English book, 'The Garden of the Soul,' but it is an English and not a French book, and when the French ecclesiastics who were here were asked the question of whether there was any French translation of 'The Garden of the Soul,' they all agreed that there was not. Therefore Roger Tichborne, who was instructed by French ecclesiastics, can hardly have been instructed from 'The Garden of the Soul.' It is, however, quite possible that his mother, in the course of his preparation, may have made him use 'The Garden of the Soul;' but the French ecclesiastics who could not speak English certainly would not have resorted to an English book for the purpose of giving instruction in religion to a person whose usual language was French. Father Lefevre is asked as to what is done in the way

of preparation: "Will you be so good as to tell us what is the course of instruction of which that preparation consists?—They are exercises on the end of man, meditations on the eucharist; on good and bad communion; sometimes meditations on death; different exercises of that kind. Q. Is there a catechism that they learn?—The catechism is separate from that. Q. Is there any work called 'The Garden of the Soul,' which is used for their preparation?—I have never heard of that book." Then the Abbé Salis was asked, "At what age do the children of Catholic parents usually go to the first communion?—The regular age for going to one's first communion is  $11\frac{1}{2}$  at the earliest. Q. Are they prepared for the first communion?—They are prepared for that first communion, and are given religious instruction during two years. Q. Is there a work, or do you know a work, used for the purpose of preparing children for their first communion called 'The Garden of the Soul'?—I do not know it. Q. What is the course of preparation? What books do they read? How is the instruction given?—The instruction is given by learning the catechism of the diocese of Paris; afterwards one uses a book called 'The Manual of Catechism.' Q. Anything else?—No." Upon being further questioned the Abbé said, "He did not know of a book called, 'The Garden of the Soul,' used in the preparation of children for communion, or know anything of it at all."

The defendant, therefore, as regards his first communion, which is a ceremony of considerable interest, confesses that he does not know by whom he was instructed. Being asked who prepared him, he does not know. When he is asked what the preparation was he says, "Answers to prayers and instructions from 'The Garden of the Soul.'" But 'The Garden of the Soul' can only have been used in the way I have suggested, and certainly would not be used by those whose business it was to prepare him. But then it is possible that, knowing of 'The Garden of the Soul,' he may have confounded with that work some other book out of which he had to learn, and he may have supposed that the one was a French translation of the other.

Then there comes a question as to the present made to him on the occasion of his first communion, and then we get into a curious difficulty. We know that on that occasion, certainly a breast-pin, and some of the witnesses have said a gold watch, was given to him by the Count de Mandreville, the old friend; and I suppose it was with a view of showing that he had no knowledge of that that the Solicitor-General tested him, and asked him whether he had any present made to him on the occasion of his first communion, eliciting a strange answer: "Do you recollect any one giving you anything on the occasion of your first communion?—Yes. Q. Who?—I do not know who it was. Q. What was it?—It was a piece of one of the late Cardinal's dresses. I do not know who it was, but some one

gave me a piece of one of the late Cardinal's dresses. *Q.* A late Cardinal; what was the name of his Eminence?—I do not remember now. *Q.* What part of his dress?—It was a little piece cut off about that size (describing). *Q.* Red?—Red. *Q.* Cloth or silk?—Cloth. *Q.* A little piece of red cloth cut off from one of the late Cardinal's dresses. *Q.* In what shape did it come to you?—It came to me fixed on paper with some writing on it. *Q.* Fixed on what?—On a bit of paper. *Q.* A piece of one of the late Cardinal's dresses, red cloth, cut off and put on a bit of paper with some writing on it. What was the writing?—I do not recollect now. *Q.* Was it a sort of relic?—Yes. *Q.* A kind of relic?—Yes. *Q.* You will excuse me, because I do not belong to your religion, but was he a canonised Cardinal—a Saint?—Yes, I expect he was. *Q.* Cannot you remember the name of the canonised Cardinal whose piece of red robe, cut off, was put on a piece of paper with something written on it? Did he go by the name of Cardinal this, or was he Saint somebody?—Cardinal, I think. *Q.* Cardinal, not Saint?—Yes. *Q.* This, I suppose, was a relic on a piece of paper, a precious thing in the eyes of a religious person?—Just so. *Q.* What became of it?—I have it in my possession now. *Q.* Have you?—Yes. *Q.* I should like to see it; have you got it?—Yes, it is somewhere about. *Q.* Whereabouts?—Up in my house. *Q.* You have never parted with it, I dare say," and so on. It was hanging up in the house. He is asked to send for it, and he does so. It is fetched and produced, and when produced it turned out not to be part of the dress, but a bit of the blanket of St. Borromeo, who was Cardinal and Archbishop of Milan in the first part of the sixteenth century. There was pasted on the back, "This belongs to Roger Charles Tichborne." The defendant is asked in whose handwriting that is, and he says he cannot say; but he thinks it is Lady Doughty's. This—translated into English—is what was written on this relic, "red cloth cut off from the"—not "dress," but—"blanket of St. Charles Borromée, and given to me in the convent of Milan, in the chamber where St. Charles Borromée used to make his spiritual retreats, as having been used by that Saint, Cardinal, and Church Bishop, 15th of July 1843." Then there is a certificate. The defendant is asked, "Can you tell me who signed the certificate?—No, I cannot." It being written in French, and the cloth being red, and cardinals wearing a red dress, the defendant was naturally led to assume when he saw it that it was part of a cardinal's dress, whereas if he could have translated the French, he would have known it was a piece of red cloth cut off the blanket, not the dress, of St. Charles Borromeo; but supposing Roger Tichborne had had that relic given to him, which he as a Roman Catholic would value, although he had forgotten French,



and did not know the difference between the French for blanket and the French for dress, would he have forgotten the fact if he had once known this as a fragment cut off from a blanket which had belonged to St. Borromeo? Again, as shown by the writing, this was not cut off from the blanket of St. Borromeo until the 23rd of July, 1843, and that date must have been later than the date of Roger Tichborne's first communion, for Roger would then have been  $14\frac{1}{2}$  years old, and he could not have had the relic given to him before. Therefore, if I am right in supposing that Roger went to his communion before he was as old as that, it could not have been given to him on that occasion. But it was suggested by Serjeant Ballantine, that, though it might not have been given him on the occasion of the first communion, because the date would not answer to that, it might have been given to him at the time of his confirmation. Then, that being suggested, the defendant says, "I cannot say whether it had to do with my first communion, or whether it was given me at my confirmation, but it had something to do with it; I do not remember when. Q. What?—I do not remember whether it was given to me at my first communion or not. Q. Then you cannot stand to that answer?—No, I do not see how I can. The JURY: It might be at his confirmation, he says. Mr. SERJT. BALLANTINE: Yes, that takes place at any time. There is no fixed time for confirmation in your church, is there?—I think not. Q. When were you confirmed?—I am sure I do not know. Q. Were you ever confirmed?—I was. Q. When?—I told you I did not know. Q. By whom?—That I do not remember. Q. Cannot you recollect the bishop who confirmed you?—No, I have no recollection of it whatever. Q. Where were you confirmed?—In Paris. Q. But in what church?—I have no recollection. Q. No recollection of being confirmed? You cannot tell me the bishop or the church?—No." The Solicitor-General further pressed him about this, and says: "Now I want to know when you say it was given you, upon which occasion, and by whom?—I cannot answer that question, because I do not recollect. Q. Do not you recollect when such a relic of St. Charles Borromeo was given you?—No, I do not. Q. Or by whom?—No. Q. Or the occasion?—I cannot say. Q. Neither by whom, nor the time, nor the occasion?—No. Q. Nor where?—The time, of course, the date is on it. Q. I beg your pardon, the date is not on it when it was given you. The date of the certificate is on it, and all that it shows is that it could not have been given you before that date; but it does not show when it was given you at all, any more than if given to me now. When was it given you?—I do not remember when; some time previous to my leaving Paris. Q. But you cannot tell when, nor by whom, nor on what occasion, nor where?—The name is there on

it by whom it was given. *Q.* Not at all. That is the certificate of the Roman ecclesiastic, who certifies that it is a relic of St. Charles Borromeo, nothing else—nothing to do with you. Now, tell me by whom, if you can, and when, and where, and on what occasion that was given you? Have you any other relics?—No, I have not. *Q.* Then if that is the only relic you have I should think you must be able to tell me when you received it?—I do not know.” It appears that he had no knowledge of any other present given him on the occasion of his first communion. He had no recollection of the breast-pin or watch given him by M. de Mandreville; but that perhaps is not to be wondered at, since he had lost all recollection of M. de Mandreville himself.

Then comes the question, who was his confessor? Père Lefevre tells us he was his confessor; that Roger constantly resorted to him, especially when a boy, and was very much attached to him. He looked on him as a friend; always came to him on his Saint’s Day, and brought him some little present, either in the shape of flowers or an offering, or a gift to be distributed among the poor; in short, he never failed to call upon him on that day to pay him his proper respects; and he generally confessed to him. This is borne out by Mrs. Nangle, who says that Roger always spoke of Father Lefevre in the most affectionate terms. Father Lefevre began by saying that Roger Tichborne was entrusted to him from the beginning, and that he was his confessor for several years. That he saw him very frequently, at least every two months. He used to come to him always on the occasion of his Saint’s Day, and he tells us he was in the habit of telling Roger a story which interested the boy very much, and it was a very remarkable story. Père Lefevre, in those days a young man, had perfectly white hair, and his hair had changed from dark hair to perfect white in the most remarkable manner. He had a dream, when he was in Spain, that he saw his father murdered before his eyes, and it agitated him in an extraordinary degree. He awoke as people do out of a terrible dream, and he was quite unconscious that the agony of terror he had gone through in his sleep had produced any physical change in his appearance; but when he saw his face in the glass, the next morning, he found his hair turned from black to the most pure and perfect white. The story interested the boy, who, as long as he was a child, used to ask the Père Lefevre to tell him the story, and he told it him over and over again. So that Père Lefevre would remain in the boy’s recollection as having been his special adviser and friend, and one to whom he confessed, and one with whom he had had these intimate relations in boyhood. Then, he says, that, not long before Roger departed for South America, he came to see him in Paris, as he was in the habit of doing, and he confessed to him the secret of his attachment to his

cousin, as to which—when we come to that part of the case—the evidence of Père Lefevre will not be altogether unimportant. I pass it by now as not being immediately to our present purpose.

With regard to Father Lefevre, Mrs. Nangle tells us that when she was living at Boulogne, Roger came through Boulogne on his way to England with his father and paid a visit there, and stayed a few days. Père Lefevre was there, and was preaching at the Marquetrie; and she says that she and her daughter walked up there with Roger to see Father Lefevre, which the defendant seems to have forgotten altogether.

But the defendant ignores Père Lefevre, and says that the Abbé Salis was his confessor. Having said he did not remember Père Lefevre, he is asked, “Would you be surprised to find that Monsieur Lefevre, whom you said you had no recollection of, was the person who prepared Roger Charles Tichborne for his first communion, and was his confessor to the day he left Europe? Should you be surprised to find that?” His answer is, “It was not so.” Then he is asked, “Did you ever know the Abbé Salis?—Yes. Q. Who was he?—He was a priest there. Q. How did you know him?—Because I had seen him so often. Q. I mean what was he, what did he do?—He was my mother’s confessor. Q. Did he do anything with you?—Yes. Q. What did he do with you?—I have been to my duties to him several times. Q. Do you mean to confession?—Yes. Q. You confessed to him, did you?—Yes. Q. Did you know him well?—Yes, I knew him very well. Q. Was he your regular confessor?—Yes, as a boy. Q. When did you last confess to him?—Not since I left in 1845. Q. Up to 1845 you confessed regularly to him, did you?—I don’t say regularly. Q. I mean so far as you confessed to any one, you confessed to him?—Yes.” The subject is resumed on a subsequent day. “I think you said the Abbé Salis was Mrs. Tichborne’s confessor: was he?—I believe so. Q. Were you intimate with him?—I knew him very well; I had seen him several times. Q. But were you intimate with him? You may know a man, and may be or not on intimate or affectionate terms with him?—Yes. I knew him very well. Q. Did you confess to him?—I believe I did. Q. Surely you can give me an answer to that?—I don’t think you have a right to ask that. Q. Excuse me; I don’t ask you what passed, but the fact. Did you ever confess to him?—I tell you I believe I did. Q. Will you swear you did?—I am not going to swear anything at all about it. Q. When did you confess to him, if you did?—I don’t recollect when. Q. More than once?—I don’t recollect. Q. Did you ever confess to anyone else?—Yes, lots of people; lots of priests. I decline to answer that question. It has nothing at all to do with this case. Q. I beg your pardon, we must see about that. LORD CHIEF JUSTICE BOVILL: On what ground do you decline?—



On religious grounds, that I have no right to answer. *Q.* You are not asked what you confessed?—No, but I do not see that I have any right to answer whether I did or not, or to whom. The SOLICITOR-GENERAL: I am afraid I must ask you, and press for an answer, the name of any one single priest to whom you confessed. You say you believe you did to the Abbé Salis, and you say lots of priests, unless I caught you wrongly. Give me the name of any one single priest to whom you confessed?—I will not do anything of the kind. The LORD CHIEF JUSTICE: You are bound to answer that question. The SOLICITOR-GENERAL: Now give me the name of one. The LORD CHIEF JUSTICE: If you have any recollection of it.—I don't think I have a right to answer, my Lord. The LORD CHIEF JUSTICE: If you have a recollection of the priest to whom you confessed, you are bound to state it, but if you have no recollection you can so state. The SOLICITOR-GENERAL: You say you confessed to lots. Give me the name of one?—I will give you the name of one who is dead, the Reverend Mr. Tilt; You cannot call him. *Q.* 'I cannot call him.' What was the meaning of that in your mind; a perfectly true observation; what did you mean by that?—I shall keep my meaning to myself. *Q.* But I want to know. Explain what you mean by putting on me a dead man, because I can't call him?—Do you think I am going to subject clergymen to be harpooned at by you for half-an-hour? Certainly not. Bad enough for myself; I am not going to subject them to it. *Q.* I wish to know why you mentioned a person who is dead?—My reason for doing so was that he should not be put in this box. *Q.* Why did you mention the Abbé Salis?—Because I had to mention him with other matters." He is still pressed upon this, and then comes this question: "Now you say to lots of priests, which is true?—Well, I suppose I have lived since 1845, have I not. *Q.* Did you confess to anybody up to 1845, except to the Abbé Salis?—Really, I do not remember. I have no doubt I have." Then they get into a squabble about whether he was speaking of the time before 1845 or after 1845. Then the Solicitor-General says, "Did you suppose I was speaking of confessors other than those to whom you confessed when you were living in Paris?—Yes, I did. *Q.* I tell you now it was not. Now whom did you confess to in Paris, besides the Abbé Salis?—I do not recollect anybody. *Q.* To any one?—Yes, I believe I have. *Q.* Did you?—I believe I have. *Q.* To whom?—I do not know. *Q.* You must remember the name of some one; you have given me a dead man; cannot you give me the name of a living one? Did you confess to many people before you left England in 1853?—Several. *Q.* I will say before you left Paris in 1845 or 1846?—Yes, one or two. *Q.* Who?—I do not recollect. *Q.* The Abbé Salis was one, who besides?—I do not recollect now. *Q.* Do you mean you

cannot recollect the name of any clergyman to whom you went to confession?—No, I have no recollection. *Q.* You cannot give me the name of a single clergyman?—No. *Q.* Is that what you say?—Yes. *Q.* Have you forgotten them?—Yes, I suppose so; I do not remember them. *Q.* But you either have or have not. Can you give me any other names?—No, I tell you that I do not recollect them. *Q.* You gave me the name of a dead man, and at the moment I did not think it would be at all useful; I should like to have the name of the dead man; what was his name?—Perhaps you will do without it. **THE LORD CHIEF JUSTICE:** You are bound to answer.—I said *The Rev. Mr. Tilt.* **THE SOLICITOR-GENERAL:** Where was that?—He was a priest at Tichborne.”

The result then is that the defendant is wrong in two important points. He is wrong in saying that the Abbé Salis ever was his confessor, at least, if the Abbé Salis is to be believed. The Abbé Salis says he was not either the confessor of Roger, or, as the defendant asserted, the confessor of Lady Tichborne. He said that he never was, but that a priest of the name of the Abbé Huel was her confessor, and he had nothing whatever to do with her confession; that is the first mistake. The second is in saying that he never confessed to Père Lefevre; that is not true, that is to say, if we can rely upon Father Lefevre and the other Paris witnesses, who all agree in saying that Father Lefevre was, and was known to be, the confessor of Roger Tichborne during the time of his residence in Paris. Here again the whole thing turns upon whether you think that the religious instruction of a boy, in preparing him for his first communion, which is very much like the preparation for confirmation in the Church of England—where a boy or girl goes through a course of religious instruction—whether that and the ceremony itself is likely to make an impression which would be a lasting one on the mind. And then whether the person who imparted the religious instruction and who takes you, as it were, to the foot of the altar, is a person of whom the memory would be impressed on your mind, and whom you would not be likely in after years to forget. Still more than that, would the fact of your confessing to a person and making him the depository of your secret thoughts and possibly secret sins—at all events, of the ordinary failings and deviations from the strict line of religious duty, into which all are more or less prone to fall—would a communion of such a kind, in relation to matters so sacred and so important, be likely to implant and fix on your memory the recollection of the individual with whom you have been thus closely brought into contact? According as you think that is so or not, the absence of knowledge thus exhibited on the part of the defendant, who says he never did confess to the Père Lefevre, in which he is wrong, and that he did confess to the Abbé Salis, in which he is equally wrong, will

be a material element in the consideration of the question whether in your opinion he is Roger Tichborne or not?

He is further asked while upon this subject whether there was any priest to whom he used to complain of the conduct of Lady Tichborne, and whether he used to complain to this very Père Alexis Lefevre, and he says, "I might have done. Q. What?—I do not remember.

Q. 'Might have done.' I thought you said you did not recollect the man at all. However, let that pass. What conduct might you have complained of?—I did not say that I complained. Q. What did you mean by 'might have'?—I might have done so. Q. What was there to complain of?—I do not recollect at the present time.

Q. Did you go to the Père Alexis Lefevre time after time with complaints of the same subject?—Yes, I believe I did. Q. What, to the Père Alexis Lefevre?—Yes."—That is very striking, because a very short time before, in the course of this very cross-examination, he had ignored all knowledge of Père Alexis Lefevre.—"What, to the Père Alexis Lefevre?—Yes. Q. Who was he? I thought you said you did not remember; who was he?—I answered your question.

Q. Who was the Père Alexis Lefevre?—I do not know; I do not remember who he was. Q. You said just now, 'I believe I did.' Now you say you do not know who he was to whom you went with repeated complaints of your mother?—Your question brings to my mind a certain thing which I try to remember. I did not say anything about the father at all. Q. Who was it first of all? Was it the Père Alexis Lefevre whom you say you believe you went to with constant complaints about your mother?—I say I do not remember him. Q. My question is, did you go repeatedly?—My answer is, I believe I did. Q. Who was he?—I do not remember who he was.

Q. Was he a clergyman?—Of course he was. Q. No 'of course' at all?—He was a clergyman. Q. What was his name?—I do not remember his name. Q. What were the complaints about?—The complaints were about keeping me dressed up as a female so many years; keeping me in frocks. Q. That you swear?—Yes. Q. Now you see you recollect that you went to some one to complain of your mother keeping you dressed up as a female?—In frocks, I should say. Q. You do not remember who that was to whom you went?—No, I do not remember. I do not think I should have remembered the other unless you had brought it to my mind." You see he says it was to a priest that he went to complain. He knows he did complain, but he cannot recollect who the person was to whom he went. "Where did you complain—in his house, or your own, or Sir James Tichborne's?—It would be at the church. Q. At the church; you really mean that you used to complain to a priest in the church?—I do not recollect. Q. I thought you said so. Let me get this, did you say in a church or not?—I believe it was in church. Q. At



what church?—It would be the church of that name. *Q.* Of what name?—I did not take any notice what name you said. *Q.* I did not give you any name; I asked you the name. What church was it?—I do not remember what church it was. *Q.* Did you go by yourself?—Probably not.” Then he is asked how late he was kept in frocks, “Up till I was eleven or twelve. *Q.* Was this the only complaint you made to this clergyman, whose name you forget, in the church whose name you do not remember, of your mother’s conduct?—I might have made others. *Q.* Did you?—I cannot say; I do not remember. *Q.* Surely you can recollect whether you went to a clergyman time after time with complaints of your mother’s conduct. Is that the only matter on which you did complain?—I do not know. I consider it as shameful conduct of the clergyman to tell you of it. *Q.* We shall see?—I know we shall see. *Q.* We shall see about that. At present I am examining you. Is that the only matter on which you went to complain of your mother’s conduct?—I do not remember whether there was any other or not. *Q.* Surely you can remember at present; I am now upon your present memory. Do you at present recollect?—No, I do not. *Q.* Just try?—I am not going to try at all; I do not remember at present. *Q.* Was anything done in consequence of your complaint about the frocks? did you get out of them, or what?—I believe I did some short time after. *Q.* Do you mean to say that the clergyman interfered about your frocks?—I do not say that he interfered about the frocks. *Q.* Did he or not?—I do not know whether he did or not. *Q.* But you complained to him of being kept in frocks, and some short time after you got out of them?—I did not say that I got out of them before the time. *Q.* Before what time?—The time devoted to it. *Q.* Before the time devoted to what?—To wearing them.” Now comes a thing which every friend of the defendant must deeply regret. He said to the Solicitor-General, as apparently intended for an insult: “You appear to be very innocent, considering your brother is a Jesuit, you must know.” On which the Solicitor-General makes this dignified reply: “I can answer for my sins. I do not know that I am to be subject to this kind of thing; not that I have not the highest love and regard and veneration for my brother.” Independently of its being intended as an insult, one cannot help being struck with this as coming from a man who professed to be, and is, I presume, and always has been, if his account be true, a Roman Catholic. It is not all Roman Catholics that adhere to Jesuitism, but I think it would hardly come from—at least it would be inconsistent with the views of—a Roman Catholic to insult a man, or to attempt to insult a man, by suggesting to him that his brother is a Jesuit priest. However, let that pass. It certainly struck one as very extraordinary at first sight that the

defendant should have told this story about his having been kept in frocks, which he explained by saying he had been devoted to the order of the blue, which sounded very absurd, and was thought to be so at the trial. But I think it came out in the course of this inquiry that sometimes children are devoted to the Virgin or to some saint, and those who are devoted to the Virgin wear for a short time a dress which consists of a white sort of tunic, having more or less the appearance of a frock with a blue border; so that it is quite possible the defendant may be right in saying he had been devoted in this way, though Mrs. Nangle says she does not think it happened to Roger in point of fact, but did happen to Alfred. The complaint which Father Lefevre told us Roger Tichborne used to make to him of his mother was as to the diet she subjected him to, of her gorging him with soup, which from the quantity of it he had to take became very disgusting to him. So the matter stands.

The next thing the defendant was asked was whether he corresponded with a French clergyman after he left Paris. We know Roger Tichborne did correspond with the Abbé Salis, and we know he makes frequent mention of the Abbé Salis in his letters down to a late period. The defendant is asked: "After you left Paris, was there any clergyman with whom you were in the habit of corresponding intimately and affectionately, and often on religious subjects, in French?" I do not know that he corresponded with the Abbé Salis on religious subjects, but he certainly wrote him a good many letters. "You mean when I was at Stonyhurst? Q. I do not mean when you were at Stonyhurst only. My question extends from 1845, when you left Paris, to 1853, when you left for South America?—Yes, I believe so"—so far he is right—"Who was the clergyman?—I do not recollect his name. Q. What makes you say there was such a clergyman?—What makes me say there was? Q. You say you cannot recollect the person with whom you corresponded; you cannot recollect his name; what makes you say there was such a correspondence? Do you recollect it?—I recollect writing. Q. To whom do you recollect writing?—I do not recollect who it was to; I recollect that I wrote several letters. LORD CHIEF JUSTICE BOVILL: I do not hear that?—I do not recollect who it was to. The SOLICITOR-GENERAL: 'I do not recollect who it was to; I recollect writing several letters;' was it to the same person or different persons?—Generally the same. Q. Generally the same: not always?—I might have written to others. Q. No doubt, you might; I ask you what you did?—I do not recollect what I did. The LORD CHIEF JUSTICE: Do you remember the place where he lived, or where you sent the letters to?—No, my Lord; I have no recollection of it. The SOLICITOR-GENERAL: Why upon earth did you say you believed you did, if you cannot recollect the person or

place to whom you wrote these letters, or even whether it was always to the same person?—I have some remembrance of writing letters.

*Q.* Yes; but that is not the question. My question is whether between 1845, when you left Paris, and 1853, when you left Europe, you were in habits of communication with any clergyman, and if so, whom, in French letters? What do you say—yes or no?—

Yes, I was in the habit. *Q.* Who was the clergyman?—I cannot recollect who. *Q.* ‘I was in the habit of communicating with a French clergyman and I cannot recollect who’—is that it?—Yes.

*Q.* Up to 1853?—I don’t know up to 1853? *Q.* That is my question. My question is between 1845, when you left Paris, and 1853, when you left Europe, and up to the time of your going away?—Certainly, up to 1849. *Q.* To whom did you write up to 1849?—I do not recollect.

*Q.* Will you swear you did?—Will I swear what?

*Q.* Will you swear you ever did write?—Yes. *Q.* Are you sure of that?—Certain of it.

*Q.* Certain?—Yes. *Q.* And you cannot tell me his name?—No, I do not remember his name at present.

*Q.* ‘At present,’ I think I caught you to say, did I not?—I say that word without meaning it. *Q.* You put it to me once or twice?

—I am in the habit of saying it when I do not consider the meaning of the word. The LORD CHIEF JUSTICE: Can you tell whether it was a person in England or France, or where it was?—It was a person in France. The SOLICITOR-GENERAL: Was it in Paris?

—Yes. *Q.* You are sure it was in Paris?—Yes, I am certain.

*Q.* Paris itself?—I think so. *Q.* You think so; are you sure it was in Paris itself?—Yes, it was somewhere near Paris. *Q.* I did not hear you?—Somewhere near Paris.

*Q.* What I want to know is whether you mean to say that the person to whom you wrote actually lived in the city of Paris?—Yes, he did, for some time. *Q.* During the whole time that you wrote to him?—No, I think I wrote afterwards to Boulogne to him.

*Q.* To the same person?—I think so. *Q.* To the same person at Boulogne?—I don’t say distinctly—to the best of my belief.

*Q.* To the best of your belief you wrote to the same person at Paris for some time, and then to Boulogne; was he last at Boulogne when you wrote to him, or rather when you wrote to him last, was he at Boulogne?—I think he was. *Q.* When was the last time you wrote to him at Boulogne?—I do not recollect what year it was.

*Q.* But about, you can tell me about. Was it after you left Stonyhurst?—Yes. *Q.* Was it after you left the army?—No, I think not.

*Q.* When about then?—About 1850. *Q.* That would be the first year of your being in the army?—Yes. *Q.* And you have never written to him?—I might have done. *Q.* I know you might; my question is, did you?—I do not remember whether I did write to him afterwards or not.

*Q.* What did you write to him about at Boulogne?—Surely, I cannot tell you. *Q.* Surely you can tell



me. You wrote to somebody at Boulogne. You think about the year 1850, for the last time. Surely you can tell me. I do not want the letter at length, of course, but you can tell me something of it?—I have not the slightest recollection. *Q.* What sort of a man was this man, large or small, slim or fat, dark or light, or what? What was he like?—I do not remember. *Q.* You have forgotten his name: have you forgotten his person too?—Yes. *Q.* Cannot you tell me whether he was a tall man or a short man, a dark man or a light man, a fat man or a thin man?—No, I forget. *Q.* How came you to write at all to this man whom you cannot remember by person or by name? How came you to write to him?—How came I to write to him? *Q.* Yes?—On account of knowing him, I suppose. *Q.* ‘On account of knowing him, I suppose?’—I do not know; you asked me the question; it is almost impossible for me to answer. *Q.* Surely you can tell me that. Is that the best account you can give me of it?—Yes.”

Thus there appears to be a total forgetfulness of the person with whom he had the correspondence, not only as regards the name, but as regards individual identity. There is a statement of a recollection of writing some letters, but it is perfectly clear the defendant has not the faintest idea to whom the letters were written. Now, the only person to whom we know of Roger Tichborne writing was the Abbé Salis, to whom he wrote many letters. Would Roger Tichborne, do you think, have forgotten who was the clergyman to whom these letters were addressed. According, as you think that he might have forgotten it or not, the ignorance of the defendant on this head will acquire importance in your eyes.

There is one more subject which will complete the chapter of the Paris life. It appears from the evidence of Gossein that Mr. James Tichborne was in the habit of making annually an excursion to some place, either to the sea side, or to some other place of resort, and one of the very earliest was in 1839, at the time when Roger was just ten years old. He went to a place on the sea-coast of Brittany called Pornic, and to that place M. Chatillon accompanied the father and Roger. While at Pornic Chatillon and Roger went to bathe in the sea, when the accident happened about which we have heard. They had done bathing, and Roger was waiting until M. Chatillon had finished dressing, when a ship came sailing before the wind into the harbour of Pornic; and Roger was struck by the sight, and ran, as a boy might do, up to the top of a bit of rock to look at the ship which was coming in. He somehow overstretched himself, or the ground gave way, and he fell and struck his head violently. The result was, M. Chatillon says, that he picked him up insensible, and had to carry him to the house of a lady, who took him in, her house being much nearer than their own. The boy was bled, and remained for

some time insensible, but recovered after a time, and the father, upon the occasion of his recovery, which took place on the festival of the Assumption, sent to the Church at Pornic a handsome present of vestments for the officiating priest, to show his sense of gratitude for the prayers offered for the recovery of his child. But, says M. Chatillon, although he fell against the jutting rock, the blow left no mark on the boy's head, because it did not cut the head at all, it merely produced a temporary depression, which afterwards came all right again. It was not, he says, on the back of the head, but rather towards the forehead, on the upper part of the head. That is Chatillon's statement of what happened on that occasion. We know the defendant was examined about it, and made one or two different statements. The subject appears to have been brought up on the occasion of the visit of the defendant to Lady Tichborne at Paris. M. Chatillon says that when he was taken to the hotel with the view of his recognizing Roger Tichborne in the defendant, he put one or two questions to him. He was at once struck very much by the difference in the personal appearance; at the first moment he held out his hand, but afterwards stepped back and said he did not think the defendant was Roger, but that he would enter into conversation with him. Then he says he asked him if he remembered the tour to Brittany, but the defendant remembered nothing about it. Then, says Chatillon, "I mentioned what happened at Pornic, and how his head had been damaged for the time by the fall." Thereupon the defendant said he had got a scar at the back of his head—which, you see, would correspond with what had taken place on the occasion of the fall. Mr. Holmes and Mr. Leete, who were there, proceeded to look for the scar, but on that occasion could not find it. But the defendant says the hair-dresser found it the next morning. M. Chatillon says there could be no scar, because there was no wound from the healing of which a scar would have resulted. That is his statement about it. That is the first journey, as far as I can make out, that Roger Tichborne ever took, and on this occasion Chatillon accompanied them. In the ensuing year they went to the coast of Normandy, and Chatillon again accompanied them, on which occasion he tells us they took the steamer and paid a visit to the island of Guernsey. In 1841 it appears that the father and mother, the boy and Gossein, went to the Pyrenees, and of that journey it would appear the defendant had a knowledge. The year afterwards the whole party went to Germany. I think they did so again in 1842. In 1843 Gossein says they went to Brittany, and in 1844 they went to Normandy. On the last occasion there is no doubt Mr. Tichborne, with his son, and Jolival, the tutor, and Gossein says the nurse, and Alfred, went by steamer to Jersey, and visited the island. As I have just mentioned, on the former occasion, namely, in 1840, when M. Chatillon was with them, they all went to Guernsey;

so that having been at Guernsey in 1840, when he was eleven years of age, and at Jersey in 1844, when he was fifteen, or fifteen and a-half, Roger Tichborne would have been twice to the Channel Islands. On the last occasion, in the year 1844, he writes this letter to his mother—I read from the English translation: “Dear Mamma, You were so long in writing to us, that I was anxious to know what you were about and what had become of you. I am very sorry to hear that you are unwell and wish I could be with you. But in three weeks’ time we shall be on our return to Paris and I shall have the pleasure of seeing and embracing you. We went to Jersey by steamboat. We remained there three days visiting the island. Papa, Belle Tête, and I are well. We embrace you thousands of times.” Now, who or what was “Belle Tête?” I think there cannot be the slightest doubt it was Alfred. Alfred was of the party. Gossein tells us the boy had a pretty head of hair, and he would very likely be called by a familiar name in that way, just between themselves and the mother.

Now let us see what the knowledge of the defendant is as to these various excursions. He is asked about them, in the first place in the examination before Mr. Roupell, and I call your attention especially to what he says there, with a view to your seeing whether he had in his mind at this time the knowledge which he exhibited on the subsequent examination: “Do you remember taking any tour in any part of France with your tutor?—Yes, I know we went. *Q.* Where did you go?—I do not remember the names of the places. *Q.* You do remember making a tour with M. Chatillon in France?—Yes. *Q.* How long were you away, do you remember?—No, I cannot say. The EXAMINER: On that tour? Mr. BARBER: Yes. The WITNESS: No, I do not remember exactly how long. Mr. C. BARBER: Was it a tour of a month or two or of six months?—I think it was only some fortnight or three weeks. *Q.* Surely you can remember where you went if it was only for a fortnight or three weeks?—I tell you I do not remember the names of the places. *Q.* What part of France was it?—That I do not remember. *Q.* Cannot you tell me the name of one single place?—No. *Q.* Do you remember any particular circumstance occurring in the course of the tour?—No. *Q.* You do not remember anything occurring?—No. *Q.* Was anybody with you besides the tutor?—Well, I really do not remember. By the EXAMINER: ‘I do not remember whether there was any third person with us’?—I do not remember whether there was or not. Mr. C. BARBER: You cannot tell me any place you went to?—No, I do not remember any. *Q.* Did you stay at hotels, or did you go to private houses?—Upon my word, I do not remember where we slept exactly. *Q.* How did you travel?—Upon my word, I do not remember; it is many years ago. *Q.* Can you tell me a single thing that you saw, or a single thing that you did, on



that tour?—No, I cannot.” According to that, at the time those questions were put to him, and he gave those answers, he had no recollection of any one tour or any one place he went to. I should not have been so much surprised if he had forgotten the earlier excursions made when he was a boy. As to the later ones, it is difficult to suppose that a boy would forget going at fourteen or fifteen years of age to an island like Jersey, in a steamer, and would entirely forget the island. It is not impossible, but it is difficult to suppose that such a thing would be entirely forgotten. The thing that strikes one is that this ignorance or want of recollection becomes afterwards so very much altered, and the memory becomes so much improved. On the next day, or on a subsequent day, on the re-examination by Mr. Serjeant Ballantine, an opportunity was afforded for supplying the deficiency as to the excursion to Pornic, and what happened there. On the first day, when the cross-examination by Mr. Chapman Barber took place, he recollected nothing; he neither recollected the tour nor where he went to, nor anything happening on that tour. He might have forgotten it; and I do not know that any observation would arise on it, although a boy of ten, to whom it caused serious inconvenience and damage, might recollect it; but the strange part of the case is, that when he comes to be re-examined by Serjeant Ballantine, his recollection is revived. Whether Lady Tichborne, who was present at the examination, had said, “How was it you did not recollect the visit to Pornic, and the accident there, when you fell down and hurt the back of your head,” I do not know; but he is re-examined, and then this takes place: “You mentioned a gentleman yesterday of the name of Chatillon; he was your tutor at Paris, was he?—Yes. Q. I forget whether you told me yesterday up to what time he had charge of you?—Principally up to the time that I lived there. By the EXAMINER: That we have got, I think?—Yes, that you have got. By Mr. SERJT. BALLANTINE: You also told us that you went a little trip with him, but you could not remember where you went to?—No. Q. Did you see Monsieur Chatillon in Paris since your return?—Yes, I did. Q. Was that in the presence of Lady Tichborne?—Yes; Lady Tichborne, my mother.” Now observe the clever way in which the learned Serjeant leads the witness to the answer he desired to obtain: “I cannot ask you what the nature of the conversation was, but, recalling your memory to it, can you now tell me where you went to with Monsieur Chatillon?—Yes, I can. Q. Where?—Brittany.” We know from Chatillon that he asked him about this, and according to Chatillon, he did not know anything whatever about it. It depends on whether you believe Chatillon if you adopt that or not. “By the EXAMINER: You now recollect that the tour you took with Monsieur

Chatillon was in Brittany?—Yes. Mr. SERJT. BALLANTINE: Do you recollect any accident that occurred to you while you were upon that tour?—Yes; I remember that I was climbing some rocks, and I fell down and cut my head. Q. Where was that?—At Ponnice. Mr. C. BARBER: Will you spell it?—I do not know that I can. By Mr. SERJT. BALLANTINE: Something sounding like Ponnice?—Yes. Mr. HAWKINS: Some place, the name of which begins with P, is that what you mean?—Yes. By Mr. SERJT. BALLANTINE: Sounding like Ponnice?—Yes. Mr. C. BARBER: Will you tell me, Mr. Examiner, how you propose to spell it? Mr. SERJT. BALLANTINE: P-o-n-i-c. The EXAMINER: Two n's would give the accent which he gave to it—Ponnice? Mr. SERJT. BALLANTINE: Yes.”—Gentlemen, I should tell you the true spelling of the word is not ‘Ponic,’ or ‘Ponnice,’ but ‘Pornic.’ Q. “Is there any mark upon your head, the result of that fall?—Yes, there is.” Thus far there is no mention made of his father having been with him on that tour; but, in the examination-in-chief in 1871, the narrative becomes a good deal amplified. Speaking then of this tour in Brittany he says the party was formed of his father, his tutor, and himself. “By your tutor do you mean Chatillon?—Yes. Q. Do you remember going to any particular place in Brittany?—Yes; a place called Ponic.” Then he is asked, “Do you remember anything happening to you during that journey?—Yes; I had a fall. Q. How came you to have a fall?—I was climbing up some rocks, and a piece of the rock gave way, and I fell on my head. Q. Did you receive any injury from that fall?—Yes, I received a cut at the back of my head. Q. Whereabouts is the cut—put your hand to it?—About here (placing his hand to the back of his head). Q. I suppose from the situation you cannot see if the mark is there; but you can feel probably; is the mark there still?—Yes; the mark is there still. Q. How came you to be on the rocks?—I cannot exactly answer that question at this distance of time. Q. But I want to know something about the circumstances of it; who was present? Was your father present?—My tutor was present—that is to say, he was some short distance from me. Q. What had you been doing?—We had been bathing in the lake. Q. Do you remember your tutor speaking to your father of how it happened, or what he was doing?—I do not remember his telling my father what he was doing, but I remember what he was doing; he was rinsing his drawers out.” You see he recollects that minute circumstance. “How long do you remember you took over that trip into Brittany? I mean how long you were in Brittany altogether?—Yes, I understand what you say; I could not tell you to a day—I should think three or four days.” According to Chatillon, the excursion was an excursion of two months, and they were at Pornic upwards half of the time. On cross-examination he

is asked, "Who went with you to Pornic?—It was my father, my tutor, and I do not know who else. Q. Which tutor?—Chatillon. Q. I remember you said there was only one?—I don't recollect any one else. Q. And you told us you had been bathing in the lake. Would it surprise you to find there is nothing like a lake at Pornic?—It would, indeed. Q. What is the name of the lake?—I am sure I don't know. Q. How far from Pornic is the lake?—Not far; it is not far from the town. Q. Not far is a comparative expression; how far do you mean—a mile, or two miles, or half a mile, or 200 yards, or what?—I should think about three-quarters of a mile. Then he is asked about the accident: "Who attended you, do you know? Was it a serious accident, or merely a slight one?—It was not very slight at the time. Q. That is not my question. I mean was it an accident sufficient for you to have a doctor or not?—Yes; I believe there was a doctor." Then he is pressed as to the limit of the journey to Pornic and the stay there, which he had put at three or four days, while he had said that the excursion lasted some weeks. He goes on to say, "I fancy we went from there down on to the sea-coast; I have a slight recollection of it. Q. Your impression is you went from Pornic down on to the sea-coast?—Yes, I have some recollection of it. Q. Did you go with your father from Pornic to the sea-coast?—Yes, my father was with us; I do not speak with positiveness. Q. That is your impression?—Yes. Q. From Pornic to the sea-coast with your father, and then from the sea-coast to Paris?—Yes, of course, we returned to Paris." After that he is asked, "How long did you stay at the sea-coast? I am assuming, of course, what you tell me is your impression is correct. How long did you stay at the sea-coast?—I do not recollect." Then he is asked, "What sea-coast place was it?—That I do not recollect; it might have been some other trip. Q. What, your father?—No; that we went to the sea-coast. I have a recollection of being at the sea-coast with my father and Chatillon. I know it might have been, or might not. Q. I am asking you to the best of your recollection what it was?—I am giving it to you to the best of my recollection. The LORD CHIEF JUSTICE BOVILL: Before you leave that, the last answer, I think, was, 'It might have been on some other trip?'—Yes, it was thinking to give the answer, it occurred to my memory, I was on the sea-coast, and I am under the impression that I went from there to the sea-coast. Q. You are asked if you can recollect any tours, and this is what you give us. What I took down in the early part of the examination is, 'I only had one tour.' Mr. SERJT. BALLANTINE: To the south of France. LORD CHIEF JUSTICE BOVILL: This morning there was no other tour mentioned. The SOLICITOR-GENERAL: No other tour at all, except the tour to the south of France, and the tour in France with



Chatillon. The LORD CHIEF JUSTICE: Perhaps you will now ask the plaintiff was there any other tour? The SOLICITOR-GENERAL: Will you swear there ever was another tour?—No, I cannot recollect any other.”

The result then is, that the defendant on the trial knew of the tour to the south of France, and the tour to Brittany and Pornic, where the accident happened, but the other tours to Germany, Brittany, and Normandy and the Channel Islands are forgotten, and even this tour to Pornic, resulting in the accident, is somehow or other strangely confused. He says they were bathing in the lake, although it is a certain fact that there is no lake within twenty miles of Pornic. The counsel for the defendant says that, as there is a bay at Pornic with a narrow entrance, the boy may have mistaken that for a lake, and I must say I should not be at all surprised at a boy of ten years of age forgetting all the circumstances and mistaking bathing in a recess of the sea of that sort for bathing in a lake. A greater difficulty is to be found in the statement that they went from Pornic to the sea-coast, as though Pornic were an inland place; but this again may be a mere confusion of a boy's recollections. The part which strikes one with surprise is the total forgetfulness, on the occasion of the first examination, of every other excursion they ever made at that time; and then the recollection of this particular excursion, with the incidents attached to it, after there had been an opportunity of refreshing his recollection, or affording any information on the subject in the meantime. Still more remarkable is the total ignorance of ever having been at the Channel Islands; more especially after Roger's letter to his mother had been read to him, in which he says, “*Belle tête, et papa, et moi nous portons bien et nous vous embrasons mille et mille fois.*” Neither the mention of the excursion, nor the reference to his brother “Belle Tête,” recalls to his mind their having gone to the Channel Islands, and he positively denies, on the question being put to him, that he ever had been there. When this letter is shown to him, and the term “Belle Tête” is brought to his attention, and he is asked what the meaning of the term “Belle Tête” is, his answer is, “It is not the name of a person at all that it refers to.” He says “‘Belle Tête’ does not refer to a person at all, or it might have been some person travelling with us. Q. Who was it?—I have no recollection who it was. Q. Do you mean to swear that it is not a person?—I said I did not think it was meant for a person. LORD CHIEF JUSTICE BOVILL: What I took down is, ‘It is not the name of a person at all.’ Mr. SERJT. BALLANTINE: Yes, that is what he did say.” It is absurd to suppose it could have been anything other than a person, as, for instance, a pet dog, or anything of that sort, that might have gone by that name, or any stranger that was travelling with them, because the letter winds up by saying, “Papa, Belle

Tête, and I embrace you a thousand times." That would not be applied to an animal, nor I should imagine, in writing to his mother, would he write that of a stranger. He would have been quite old enough to know it would not be proper to say that a stranger travelling with them would send such a message. Alfred, we know from Gossein, was with them on that trip; he was a fair-haired boy, and I think there cannot be a doubt that Roger was referring to him under the playful appellation of "Belle Tête" by which name the boy was probably known amongst them.

We now have gone through the different parts of the Paris life of Roger Tichborne, as to which it occurred to me that the memory of any one professing to be Roger Tichborne might properly be tried and tested. I have brought these things to your attention, and you will give such effect to the result of the examination and the questions and answers as you, on consideration, shall deem proper.

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## ONE HUNDRED AND EIGHTY-FOURTH DAY.

*Monday, February 23, 1874.*

THE LORD CHIEF JUSTICE: I am now about to call your attention to the statements made by the defendant on the occasion of his examination and cross-examination with reference to the second period of the life of Roger Tichborne, namely, his life at Stonyhurst, and I begin with the circumstances under which Roger was placed there. Now, we know perfectly well that in consequence of the mother resisting his being put to a school in England, as the father wished, the latter took advantage of the occasion of bringing him over to attend the funeral of the uncle, Sir Henry, to place him at Stonyhurst, instead of taking him back to Paris; and on that point the defendant was perfectly well informed. On that question being asked of him, he stated correctly how that had come to pass. I pass on to the second point, namely, the circumstances under which he was introduced there, and in the first place as to who took him to Stonyhurst—as it appears to me, a fair test. If a lad is taken to a public school, or institution, or college, at the age of sixteen or seventeen, he would remember in afterlife, I should think—but about that you will form your own opinion—whether his father took him there, or a tutor took him—in short, how he was accompanied, and how he was placed there; and therefore that question was put to the defendant by his own counsel: a very proper question to put. He was asked whether he went alone, or whether somebody went with him, and he says he was accompanied by Father Brindle, a priest at Poole, and that his father did not go with him, but

remained at Upton. He is asked on cross-examination whether he adheres to that, whether there can be any doubt about it, and he says, "No, I do not think there can be any." "Are you certain of it?" asks the Solicitor-General—"Yes. Q. Certain?—As certain as I can be from memory. I feel quite certain that he did. Q. But are you quite certain?—Yes. Q. Quite certain?—So far as my memory takes me." He is here altogether wrong. There can be no doubt on the evidence that it was Roger's father who took him to Stonyhurst; we know it by evidence derived from three or four sources. In the first place, there is a letter from Mr. Seymour to old Mrs. Hopkinson, written from London, dated the 30th of June, in which he says, "Mr. Tichborne and Roger went this morning to Stonyhurst, both in very good spirits, and I hope Roger will like the place and take to his studies." Then the letter of Mr. Seymour is read to him, on which he makes this characteristic answer, "Well, but that does not prove my father went the whole way with me." Well, that is true, and it might have been that his father took him to Upton and stayed himself at Upton, and sent him on thence by this priest, Father Brindle; but that that cannot be is shown by all the other evidence. In the first place, there is Mrs. Bouverie's diary, which records the fact of Sir James Tichborne leaving with Roger from Grosvenor Street, and then the fact of Sir James "coming back, having left Roger at Stonyhurst happy and well." Besides that, there is the Stonyhurst evidence. There is the evidence of the Viscount de Brimont, Roger's relation, who says that when Roger arrived he was sent for as his relation to receive him, and that Roger was accompanied by his father, whom, of course, M. de Brimont knew perfectly well. Then there is the evidence of Father Mann, who was introduced to the person who accompanied Roger as his father. Mr. Waterton says the same. Another witness says that though he does not remember being introduced to the gentleman who accompanied Roger, as his father, the gentleman was dressed in a secular dress, and certainly was not a priest. So that there is a whole body of evidence that it was his father who accompanied him. Upon that point we must take it that the defendant was clearly wrong.

Then comes an inquiry as to the circumstances of his first introduction to the rector of Stonyhurst; and he says that he was received by the rector, to whom, in the first instance, he gives the name of Venable, but afterwards, on being reminded of what he had said on his examination before Mr. Roupell, he says he was mistaken as to the name, and says it was Father Walmesley, who he says was one of the priests at Stonyhurst at the time. "That," he says, "is the name I meant just now instead of Venable." But he is wrong again in this, for I have the lists here of the rectors of Stonyhurst, and Father



Walmesley was not then rector. The rector was, as Viscount de Brimont correctly states, Father Barrow, and not Father Walmesley, who was not rector until two years afterwards. However, that might have been a mere accidental mistake of memory. Then the defendant was asked as to a relation having been sent for by the rector to see him and his father, and he has no recollection of it. He is asked first whether a relation was sent for, and that he does not recollect; and then it is put to him pointedly whether M. de Brimont was not sent for. "I ought," says the Solicitor-General, "perhaps in strictness to put this to you. This is the shortest way of putting it, that your cousin Charles de Brimont was sent for, that Mr. James Tichborne was there, and you and the superior. Now do you recollect anything?—No, I do not. Q. I have given you now the name of the relation, Charles de Brimont?—Yes. I have no recollection. Q. Do you recollect his being there at all?—I have no recollection of his being there; if he was there he must have been there a very short time. Q. I mean the man you told us you called Bremont, and said was your mother's relation?—Yes, I know the man. Q. Was he there, and did the superior say to him, 'You must teach your cousin English,' and De Brimont said, 'Well, then, he must teach me French.' " Of course M. de Brimont, if told by the superior he must teach his cousin English, would naturally have thought it rather odd that he, a Frenchman, should be put to teach an English boy English; and he makes the smartish answer "'Well, then, he must teach me French,'" and he was reproved, he tells us, by the superior, who, I suppose, thought the answer a pert one. All this is put to the defendant, and he says, "And you expect me to answer that? Q. I ask you whether it happened?—You are told that, prompted by perhaps 200 or 300 people. Q. Will you answer the question?—I have. Q. Do you remember it?—No, I do not." Neither of these are very stringent tests, but still it is a fact that he appears to have had no recollection of his cousin having been sent for, M. de Brimont having been there at the time. Now, it appears to have been usual at Stonyhurst, on a new pupil coming, that he should be taken over the establishment. If his father comes with him, then they tell us it is usual for the rector to go round the institution and to show it to the father and young lad, or young man, and upon this occasion Roger and his father were taken over the institution. Roger mentions it in a letter to his mother, and he says it was by the superior; but probably at that time he did not know one officer from another. It is quite clear he was not taken over by the superior; that is to say, if by the superior he meant the rector, because it seems that Father Barrow was a great invalid at that time, and he consequently handed the party over to Father Waterton, who was at that time the Prefect of the Philosophers, to take them over

the establishment. The defendant is asked about that. "Were you taken over the college by anybody?—I do not recollect, I am sure. Q. You do not recollect?—No. Q. Surely you can remember whether you went over the college with any one. Cannot you recollect that?—No, I have no recollection." Again he is asked, "Did any one take you round?—I told you before, I do not remember; probably they did. Q. Eh?—Most likely they did. Q. Did anybody show you all over the establishment?—No doubt they did, but I do not remember who." Then there is a long cross-examination as to whether Mr. Waterton—Long Tom, as he was called—did not take him over it. Here, however, the Solicitor-General had got wrong, because he was confounding this gentleman, who only met the party, with his uncle, Father Waterton, who was the Prefect of Philosophers, and who did take them over the place. I think that may have created confusion, but at the same time it is remarkable that the name of Waterton being thus put pointedly before the defendant, he remembered neither uncle nor nephew, the uncle having been one of the authorities at Stonyhurst for a considerable time. So much for his introduction to Stonyhurst.

Now, I am just going to call attention to the different things which, as it strikes me, may reasonably be expected to remain in the memory of a man in afterlife, as to the period at which he was at school, at the age of from sixteen to nineteen. In the first place, I apprehend that a person would recollect the class he belonged to, and, besides that, would recollect something about the number of that class, and the general habits of the class. The defendant is quite right in saying that he was placed in the class of the philosophers; but he would rather have given us to understand—or perhaps his counsel would rather have given us to understand—in order to account for what is a striking feature of the inquiry, the statement of the defendant that he was not placed in the college, but in a cottage—that he was placed in a cottage for the purpose of preparation, and was not admitted to the class of philosophers at once. That, however, was clearly got rid of by a few questions in cross-examination; and there is no doubt that he was admitted in the first instance as a philosopher. When he is examined in chief he is asked: "Were there different sets of scholars?" and when he is asked about the philosophers as distinguished from the other students of the place, you will see that he gets into terrible confusion. He is asked, "Were there different sets of scholars?—Yes. Q. What were they?—There were the philosophers in one class, and the laity in the other. I mean in one part of the college, not in one class: the college was separated into two. I do not mean the building, but the scholars. The SOLICITOR-GENERAL reads him what he previously said, and asks him: "What is your recollection about that? Were there

two classes at Stonyhurst?—Yes, there were two sets of scholars. *Q.* And only two? Is that so?—Yes, and only two. *Q.* And the names of the one were the philosophers, and the names of the other the laity?—The students; yes. *Q.* Do you mean the ordinary students went by the name of the laity?—Then he again reads from the former examination: “ ‘ Were there different sets of scholars?—Yes. *Q.* What were they?—There were the philosophers in one class and the laity in the other.’ Do you mean they went by the name of the laity?—Well, I do not know that they went by that name. *Q.* I do not either: I want to know what you know?—I mean the students in the college. *Q.* What did you mean by saying the laity? what distinction do you draw between the philosophers and the laity?—The students were studying for the church. *Q.* Which? the philosophers or the laity?—The laity. *Q.* The laity were studying for the church?—Yes. **LORD CHIEF JUSTICE BOVILL:** The students were studying for the church, I understand?—Yes. **THE SOLICITOR-GENERAL:** Just so. Do I understand you mean by the laity and the students the same thing?—Yes; just so. *Q.* Then do I understand you that, the laity and the students being the same thing, all the laity or students were young men preparing for orders, were they?—I think the most part of them. *Q.* Is that your recollection of Stonyhurst—that the students, what you call the laity, were for the most part young men studying for holy orders?—Yes.” Now that is an utter mistake, as we know from the constitution of the place. The school being one which was resorted to by the sons of the Roman Catholic nobility and gentry, the whole body of the students was by no means studying for holy orders, though many of them, no doubt, were. The examination continues: “Then there were two classes, and two only, the philosophers, to whom you belonged, and the students, or the laity, who were preparing to take orders in the church. Is that so?—Yes. *Q.* Were there any other classes? Were the students, what you term the laity, divided into any other class—any other names?—I do not recollect whether they were or not. *Q.* Cannot you remember the names, if there were any? You have not yet said there were, but if there were any divisions amongst them, cannot you remember the names of the divisions?—No, I do not. *Q.* Have you forgotten the names of the classes into which they were divided?—Most undoubtedly.” We know there were seven classes, and if Mr. Stores Smith speaks correctly, when he used to talk at Cahir with Roger about Stonyhurst, Roger not only knew of the division into classes, but he had picked up information about them, and was able to tell Mr. Stores Smith all about it. However, I should not be at all struck with the fact that after a good many years a man might have forgotten all that; it is quite possible. But the difficulty in this part of the case,



as it strikes me, is, that Roger Tichborne should have fallen into the notion that the philosophers were distinguished from the rest of the students, by the latter being termed the laity, and should have supposed that that term applied to those who were studying for divinity, and who were intended for the church. I should have thought that, even with an uneducated person, the word laity would have carried with it exactly the opposite signification. Again, could Roger have supposed that the great body of the students were all intended for the church? Because there was a very striking instance to the contrary in Roger's own cousins, the two Arundels. Though one, Everard Arundel, in later life became a priest, at that time there was no thought of his becoming a priest. And we know that the greater part of the students there were not intended for the church at all.

Next comes this question: Would a man who had been in a particular class at a school or a public institution of any kind totally forget the number of the class—that is, the general proportion which it bore to the entire number of the institution? Take, for instance, the sixth form at Eton, or any other class which may be suggested? You might not recollect the exact number, but you would not make, I think, the mistake of converting the number of ten or twelve or twenty into four times the number. Let us see what the defendant says. He is asked on the examination before Mr. Roupell: “What was about the number of students at the time you were there? I do not want an accurate answer, but a general one; how many dozen do you suppose?—Well, I really cannot say exactly how many. *Q.* Were the students divided into classes?—Yes. *Q.* How many were there in your class?—I do not remember.” Then he is afterwards asked on examination on the trial: “How many young gentlemen were there at Stonyhurst in your time?—I could not speak to one. *Q.* I do not expect you to speak to one, or two, but about?—170 or 180. *Q.* 170 or 180?—It might be 150; I do not know. *Q.* From 150 to 180 may I take it?—About that. *Q.* About that, but is that the number?—I cannot say. *Q.* I do not ask to a unit, may I take it from 150 to 180, more or less?—More or less.” Then comes an inquiry as to the number of the philosophers. Now we know how many philosophers there were: according to the evidence the entire number who passed through the establishment during the whole time Roger was there did not exceed twenty-eight; and hardly ever, if ever, at any one time exceeded fourteen. I think that is the number which Humphreys, who attended the philosophers, stated the philosophers reached, and he is confirmed by the other witnesses. The defendant is asked, “How many philosophers were there?—I think there were from eighty to ninety. *Q.* From eighty to ninety, is that your recollection?—Yes. *Q.* Was that in addition to the

150 to 180, or did the number you first gave me include the philosophers?—It includes everything. *Q.* Then there would be not much above 100, exclusive of the philosophers, in fact not so many, if your 150 is right; is that so, not above 100?—I cannot say exactly. *Q.* Do you mean there were eighty or ninety philosophers in the whole, counting the three years you were at Stonyhurst, or do you mean there were constantly from eighty to ninety philosophers during the three years you were there? You understand the question?—Yes, I do. *Q.* Just answer, please?—In speaking I meant at the time. *Q.* Did you mean that there were eighty or ninety constantly there, or that during the three years eighty or ninety men passed through the class of philosophers? which?—I meant there was generally that number there. *Q.* Will you swear that during the whole three years you say you were at Stonyhurst there were more than twenty-eight philosophers in all?—That is so, no more than twenty-eight passed through the institution at that time.—“I think there were more than that. *Q.* Will you swear there were?—If you have got a book there, if you have got it on record, do you think I am going to swear it? *Q.* Do not say I have got a book; I am asking you questions. Will you swear there were more than twenty-eight philosophers in all between 1845 and 1848, when you were at Stonyhurst?—No, I will not swear at all. *Q.* What made you say from eighty to ninety?—I believe there were about that number. *Q.* Will you swear there were ever at one time more than thirteen or fourteen?—I will not swear anything at all about it.” Being again pressed on the subject, he says, “There were a great many more than twelve to fourteen. *Q.* I ask you will you pledge your oath that there were more than twenty-eight in all, or that the average number during the three years was more than from twelve to fourteen philosophers. You know?—Yes, I understand what you mean. *Q.* Well, what do you say?—I say there was more than that. *Q.* Will you swear there were?—I am not going to swear it. *Q.* You have told me there were from eighty to ninety. I ask you whether you mean that was the whole amount, or there was a standing number from eighty to ninety? You told me the latter?—A great number.” Now it seems difficult to suppose that a man who has been in a distinct class, separated from the rest of the establishment, and which never numbered more than fourteen or fifteen, should afterwards assert that that number was eighty or ninety. Of course it would make a vast difference to a man in his daily associations, whether he was associated with eighty or ninety people, or the smaller number varying from twelve to fifteen. However, he at first adhered to it. The Solicitor-General pressed him again and again. He pressed him to swear about it; I do not know why, because it was a matter not of fact but of knowledge and memory, and then the

defendant says, "I will not swear. If you think I am going to swear, I am not going to do it." So it remains. The evidence is clearly that the outside number was certainly not above from fourteen to sixteen at any time. The number of the rooms appropriated to philosophers in the seminary was thirty-two, and therefore there could not be more ; and half that number appears at the very outside to have lodged there at one time ; yet the defendant, who says he lived with them for three years, had entirely forgotten the number of the class to which Roger belonged, and put it at four times the real amount !

Now another point on which I suppose the memory in afterlife would remain is the residence. If you were to ask a man who had belonged to a college at Oxford or Cambridge, whether he lived in college or out of it, he would be able to tell you ; and if he lived in college, I suppose he would be able to tell you in what building or quadrangle his rooms were ; on what side of the court, the back, front, or middle. Again, if he lived out of college, as many men do at Cambridge, he would probably be able to tell you the street in which he lived. Take a schoolboy who had been some time at school, would he recollect in what part of the house his sleeping-room was ? Suppose you were put at the door of the school where you were educated, and had your eyes blindfolded, would you or not be able to find your way to the room you occupied ? I can only speak for myself, and therefore I will not speak at all ; but I put it to any man's experience, what his own recollection on such a matter would be. Well, according to the estimate you may form of what would be the memory on such a matter, you will judge of the effect of the answers of the defendant. He begins by saying that he spent the first fifteen or eighteen months of his time at Stonyhurst, not in the college or any building forming part of the institution itself, but in a cottage. "What part of the college," he is asked in examination-in-chief, "did you live in?—You mean my residence ? *Q.* Yes ?—In a cottage just outside the left of the college, as you go up, the second house. **LORD CHIEF JUSTICE BOVILL :** Just outside was the last I heard. **Mr. GIFFARD :** Just outside what ?—There were a few cottages at the end of the college ; the second cottage from the college buildings ; there were several cottages." The Solicitor-General, on cross-examination, having read that passage to him, says, "Is that true ?" and he says, "Yes, quite true. *Q.* How near are those cottages to the college they adjoin ? Are they within the curtilage of the college ?—Of course they are." Then Lord Chief Justice Bovill observes, "That is rather a difficult question." Then the Solicitor-General asks, "Are they within the buildings ? are they within the walls of the college ?—Yes, they adjoin the college. *Q.* I mean, are the gates of the college outside them ?—Most undoubtedly. *Q.* Most undoubtedly not, or what ?—You are trying to puzzle and confuse me ; what is it that you really want to know ? *Q.* I want



to know whether the cottages in which you said you lived are inside the walls or outside the walls of Stonyhurst College?—I tell you they adjoin the college. The LORD CHIEF JUSTICE: The expression was, ‘It was the second cottage from the building?’—The gates are a long way from the college—there is a long path away from the college; there is a long path running up. Q. The question is, whether these cottages are within the walls of the college?—Yes, they are within the grounds, my Lord. The SOLICITOR-GENERAL: Coming from the high road you would have to pass through the gate of the grounds of Stonyhurst to get to them, would you?—Most undoubtedly. Q. Are they connected together?—Yes. Q. What sort of size are they? You talk of them as cottages; what kind of buildings, more than one story?—No, one story; that is all, I think. Q. A row of small buildings?—Yes. Q. How many?—Four or five, I think. Q. Who was in the cottage besides?—The lay brothers generally stayed in the cottages. Q. Did you say generally stayed in the cottages?—Yes. Q. Do you mean that is where they lived?—Yes, generally. Q. Generally?—Yes. Q. All the time you were down there?—No; there was occasionally one of the fathers lived there. Q. But were they generally occupied—those cottages—by what you call the lay brothers?—Yes, generally. Q. Were there any other young gentlemen in the cottage besides yourself? You would remember that, I should think?—No, I do not. Q. You do not remember?—I think not. Q. Are you sure?—No, I am not quite certain. Q. Not quite certain whether any school-fellow of yours was in these cottages when you were there: is that what you say?—Yes. Q. Cannot you remember it?—No, I do not remember it. Q. Chiefly lay brothers and once a father?—No, I did not say once a father. Q. I thought you said so?—I said sometimes one of the fathers. Q. How long did you stay in the cottages? the whole time you were there?—No, not the whole time I was there. Q. How long?—I think fifteen or eighteen months, or something like that. Q. In the second cottage?—In the second cottage.” Now comes a very important question and answer. “And where did you go then?—Where did I go when? Q. When you left the cottage?—I went into the college. Q. Whereabouts were your rooms in the college? I have a plan here. Perhaps you can tell me whereabouts were your rooms in the college?—Let me look at the plan. The SOLICITOR-GENERAL: No, I mean I can follow you. You can tell me what quadrangle, what staircase it was. At Oxford or Cambridge, a man could tell his rooms, and I daresay at Stonyhurst a man could do the same?—It was on the left. Q. Whereabouts were your rooms?—At the left, at the back of the quadrangle. Q. At the back of what?—The back of the — The LORD CHIEF JUSTICE: At the back of what?—On the left going

facing the college. It is on the opposite side at the back. Mr. SERJEANT BALLANTINE: It was a quadrangle. The SOLICITOR-GENERAL: A quadrangle would have different staircases, and doorways, and so on. All the colleges I have seen are much alike in that respect, staircases and doors. A man could easily tell where his rooms were, in the first or second quad, in such and such a staircase, so many flights up, and the door to the right or left?—Yes, I could tell you. Q. What do you mean by the back of the quadrangle?—What do you mean by a quadrangle? Q. You used the term; what do you mean by it?—I meant a staircase at that side of the house. Q. Do you really mean to say you do not know the meaning of quadrangle?—I mean to say I am explaining to you where it is, but you will not understand it. Q. Excuse me, you were asking me what I mean by quadrangle: you used the word, and I asked you what you meant by it, and you told me a staircase at the back of the house. Do you really mean to say you do not know what a quadrangle means—you, a Stonyhurst man? Surely you can tell me what a quadrangle is?—It is a part of the building. Q. It is a part of a building; so is a door-post; but what is a quadrangle? You were at Stonyhurst three years, surely?—I am not going to answer such insolent questions. Q. Such what?—Such insolent questions.” Then the Chief Justice says: “But are you aware that you asked the Solicitor-General what he meant by quadrangle? It was your question, you know, at first?—I beg your pardon; the Solicitor-General made use of the word first. The SOLICITOR-GENERAL: I beg your pardon. SERJT. BALLANTINE: No. The LORD CHIEF JUSTICE: However, the question is, what do you understand by the word quadrangle?—A quadrangle is a part of a building, my Lord. The SOLICITOR-GENERAL: What part of a building?—Why the part of it that goes round (describing with his hand). LORD CHIEF JUSTICE BOVILL: A part of it—what? If you will, repeat what you said? The SOLICITOR-GENERAL: Did you say a quadrangle went round?—No, I did not say. Q. What does it mean?—Quadrangle would mean part of a building. Q. So does a door-post, as I have explained to you already; what I want to know is, what part of a building a quadrangle is; you were at Stonyhurst three years?—Yes; you have said that about a dozen times. Q. I ask you whether you can tell me what a quadrangle is, can you?—No, really I do not know what you mean by a quadrangle. Q. Really you do not know what I mean by a quadrangle? LORD CHIEF JUSTICE BOVILL: Is that what you say?—Yes, that is what I said. The SOLICITOR-GENERAL: Now, you have told me you don’t know what I mean by a quadrangle; will you tell me what you mean by a quadrangle?—I have already answered the question: by the quadrangle I meant a part of the building that was on the left wing. Q. What sort of a

thing was it, the quadrangle?—What do you mean by what sort of a thing it was? It is really shameful your going on in that way, wasting enormous expenditure of time harping on a thing of no importance whatever. *Q.* What sort of thing?—I told you before it was a part of a building I was alluding to.” Then the Solicitor-General, still pressing him, says, “Now perhaps you will tell me what sort of thing a quadrangle is?” and he says, “I tell you I will not answer your question any more.” So that we get to no conclusion. Then the Solicitor-General asks him a question which certainly is of no small importance: “Did you ever go to the seminary at Stonyhurst, or near Stonyhurst?—The seminary? *Q.* The seminary?—Do you mean the cemetery? *Q.* No, I mean what I say; I do not mean the cemetery; I mean the seminary—what I said: did you ever go to it?—I do not know it by that name. *Q.* You do not know it by that name?—Do you mean on the bank of the Hodder? Do you mean the separate building away from the college? *Q.* I asked you whether you ever went to a seminary at Stonyhurst, or near Stonyhurst?—I might have done; I have no recollection of it. *Q.* Did you?—I have no recollection. *Q.* I know you might; did you? is my question.—I don’t know what you allude to; not by that name. *Q.* You never did know any place under that name?—I have known lots of places under that name. *Q.* I mean at Stonyhurst—a place distinctly called the seminary?—Yes, the seminary. *Q.* Was there ever such a place at or near Stonyhurst you ever went to? You may not have gone to it?—I do not think I did.” Then the Lord Chief Justice says, “Keep to the question separately, whether he knows such a place? The SOLICITOR-GENERAL: Do you know such a place as the seminary?—I do not know it under that name. *Q.* You never went to such a place?—I tell you I do not remember it under that name. *Q.* I say, as far as you know, you never went to such a place?—No. *Q.* You lived in, as I understand, the cottage, and in this quadrangle that we have had such a difficulty about—those two places: was there any other place at Stonyhurst where you ever lived?—No, I think not. *Q.* Was there any other place at which you lived at Stonyhurst, besides the cottage and this indescribable quadrangle?—I think not.”

Let us pause here for a moment, and recollect where the philosophers did live. We know that Roger went to Stonyhurst on the 1st of July, 1845. At that time the evidence fully and conclusively shows that the philosophers were lodged in the college itself, as distinct from any separate building, in the particular part which is over what are called the class-rooms, the fencing-room, and the music-room, which were sufficiently pointed out. They were then living in the college, but before they returned from the August vacation a resolution had been come to by the authorities to shift their quarters. There is a



place, a distinct and detached building, but within the grounds of the college, called the seminary, a considerable edifice, but containing only two stories—the lower story appropriated to rooms occupied in common by the young men called the philosophers—the sitting-room, library, and dining-room, and to the offices connected with the establishment; the upper story divided into thirty-two separate rooms, each philosopher having his own room. It was to that seminary, on their return from the August vacation, that the philosophers were transferred, the divinity students, who had occupied it before, being removed into the quarters which the philosophers had previously occupied; and from that date—that is to say, from the commencement of the collegiate year at the beginning of October, 1845—until the October of 1848, at which time Roger had left—the philosophers continued to occupy the seminary; but in that October of 1848, as the entry in the college books shows, the philosophers went back to the college, and the divinity students took their place at the seminary. Therefore, with the exception of the first month of July that Roger was there, throughout the whole time of his residence at Stonyhurst, the philosophers resided at the seminary. Now the seminary had taken its name from its being originally appropriated to the divinity students, and when the philosophers were put there in their place, it was proposed to change the name, and to call what had been the seminary before, St. Mary's Hall; and in the official records it always goes by the name of St. Mary's Hall. But the witnesses tell us, what is quite natural, and what one can easily understand, that, in popular parlance, the name of "The Seminary," which it had borne for so many years before, still remained, and, in ordinary parlance, nobody thought of calling it St. Mary's Hall. Therefore, one is surprised to find that the defendant, if Roger, could have so entirely forgotten the name of the seminary, as the place where he lived, as to imagine when the sound reached his ear, that the learned counsel was questioning him as to the cemetery, the place of burial. However, so it stands.

Next, as to the possibility of the defendant living in a cottage. A great deal of time was consumed in trying to ascertain where this cottage was. Evidence was brought before you for the purpose of showing that the cottages on the site to which the defendant had pointed were only two, and that of these one was occupied by the gardener of the institution, and the other belonged to the mill which these cottages immediately adjoined, and was used for the purpose of putting in it things belonging to the miller, or for the purposes of the mill; and that evidence appeared conclusive. Then the learned counsel for the defendant would have it for some time that there must have been some other cottages there, which had been since removed, and which, if the former ground plan of Stonyhurst were produced,

it would have exhibited. They had to send to Stonyhurst for the plans, and the plans were brought. Then the learned counsel said, "You have not brought them all. If you had inquired of this person, or of that person, you would have found some other plans." However, that was abandoned after a time, and then the cottage was sought somewhere else. Then he said, "There was a cottage on the other side of the road leading up to the college;" but it turned out that that was a cottage which had been occupied by the music master, and that had to be given up. But then he said, "Ay, but there were some cottages at the back of the seminary, on the opposite side altogether, and it must have been one of those." And then we had a great deal of cross-examination as to what those cottages were, and whether they were not such as that one of the philosophers might have lived in them. You understand that these were young men paying 100*l.* a year, and who were therefore entitled to some decent accommodation—I mean relatively to their position in life. And then we had to inquire as to those cottages, and it turned out that they were occupied by labourers, I believe most of them connected with the institution, but still mere labourers. Besides which there was this additional difficulty: it was agreed on all hands that it would have been utterly inconsistent with the discipline of the college that a young lad of sixteen, or seventeen, or eighteen, should not be within the walls of the college at night, or some building immediately connected with the college, and under the personal superintendence of some of the masters; that he should have the opportunity of getting out, which, if living apart from the institution, he would have had. Such a thing would obviously be altogether inconsistent with the character of the institution. Then an attempt was made to show these cottages were in the precincts. It turned out that they were quite beyond them, and were situated on the high road leading to Hurst Green. Then the learned counsel gave that up. Then the next resource was to say the defendant had mistaken the seminary for a cottage. The seminary is a two-roofed building, and is of course comparatively insignificant when looked at by the side of this magnificent academic building, which has all the grandeur and grace of architectural beauty; but I was surprised to hear such an argument, I must say, because when you think of a building which would accommodate thirty-two people on one floor, and which has large rooms, like dining-rooms, libraries, and sitting-rooms, on the lower floor, it is surprising it should occur to anybody's mind to call that a cottage. I suppose some observation on that fell from the bench, and the learned counsel felt that was not altogether the thing, and I thought the cottage story would have been given up; but at the end of the case came a Mrs. Coates, who was thirteen years of age at the time Roger was at Stonyhurst, but who said that she remembered him

very well, and remembered the length of his foot ; and amongst other things she told us of a cottage which we had not heard of before, a cottage on the other side of the college garden, kept by a woman who made confectionery for the establishment ; and this witness told us that she had seen Roger at this cottage, when she went there to get some confectionery for some school treat which there was to be, and she took it into her head, without any ground, so far as I can see, that he was at that time living in this cottage ; and on that foundation the learned counsel addressed you, and asked you to believe that during the first fifteen or eighteen months of Roger's residence at Stonyhurst, he was living in this cottage. He forgot that, according to the defendant's account, the lay brothers, and sometimes one of the fathers, lived in this cottage—which could not well have been the case in this cottage occupied by the woman who made confectionery for the college. It is to be observed that no question was put to the Stonyhurst witnesses about this last-mentioned cottage ; nor was anything suggested about it till this Mrs. Coates was produced. And there is this further observation to be made—I don't know if it occurred to you, but I must say it struck me as a singular thing—that the learned counsel should be beating about to find a cottage in which to locate Roger Tichborne, when there was his client sitting close to him, who, if Roger, could have told him in a moment where the right place was, and have directed him at once to the confectioner's cottage, if that had been the place. But the difficulty still remains, to which I have already adverted, why should Roger be thus segregated from the rest of the philosophers, and be sent to live, or allowed to live, in this cottage, instead of living with them in the seminary ? One naturally seeks for an explanation of that. The authorities say it would have been wholly inconsistent with discipline ; that such a thing would never have been allowed, except in the case—and I do not think they remember an instance—of a boy being suddenly taken ill of an infectious disease, which would render it expedient to remove him to any place into which he could be put. In such a case, if there was one of those cottages into which a lad could be placed, they might very possibly place him there. But then Roger never had any infectious complaint or contagious disorder that we have heard of. If he had any infectious complaint it is not likely he would have been taken from London to Stonyhurst, and left by his father at Stonyhurst ; and this is not a removal from the college or seminary, as the case might be, into a cottage on account of some disorder, but it is, according to the defendant's account, a placing of him there at the commencement of his residence. Now, that would seem to be fatal ; but the learned counsel has an explanation to offer. He says that Roger was a young man of loose habits, and that when he was staying with his father, before he went to



Stonyhurst, he contracted a certain complaint, and that when he went down to Stonyhurst this became known. Had this been the case, you would suppose the very first thing they would have done would have been to send him back again; but, says the learned counsel, "No; these Fathers had compassion upon his youth, and treated his frailty with indulgence, especially as he was connected with the Arundells, and the Arundells are a powerful Roman Catholic family. So the Fathers determined to pass this over, and sent the lad to live at this cottage until he got well; and that lasted for fifteen or eighteen months; and so during the whole of that time he lived in the cottage." Well, but he certainly was well enough to go home at the end of the first month for the vacation, and I should have thought he might have remained at home until he was cured, instead of coming back. However, he must have come back, if he remained there for fifteen or eighteen months. Well, but what foundation is there for all this? What foundation in the way of evidence? I would most gladly place it before you if I could find any, but it is the most gratuitous assumption one ever heard of. It is very true that when you come by-and-by to look at the cause assigned by the defendant for leaving Stonyhurst, or the circumstances under which he left, he says he left it prematurely and precipitately, in consequence of his contracting a complaint which led to his being sent away. But the defendant never has said, or suggested, so far as we know—certainly never openly—that there was anything the matter with him when he first went there. On the contrary, as I shall show you, when I come to his examination on this point, he distinctly and pointedly refers to a complaint which caused him to leave prematurely, and never suggests anything of a complaint when he first went there; and there is not a tittle of evidence—it is the purest invention of the learned counsel's ingenuity that can be conceived—except this suggestion, there is not a shadow of evidence that it was so; and what is more striking than all this is that the Stonyhurst authorities were called, one after the other, before you, those who had to do with the management of the establishment during the time when Roger went there, and the time he was there, and amongst them the infirmarian; and no such question was put to any of them. And I cannot suppose that if this young man had been sent to this cottage on the score of any such disease, the authorities would not have known of it. Moreover, I cannot see why he might not just as well have been kept in his own separate room as sent to a cottage, because all the philosophers had their separate rooms, and I cannot, therefore, see any motive whatever for it. But if it was the case, the defendant must have known it, and surely he would at the earliest possible period have communicated it to his counsel, in order to account for the apparent anomaly and inconsistency of his saying he

was placed in a cottage instead of being with the rest of the philosophers; but the whole body of the Stonyhurst people, the infirmarian included, passed through the ordeal of cross-examination, and no single question was put to any one of them on the subject of this supposed complaint, which, one would think, they certainly would have known of, if it had existed, and as to which, therefore, the natural and usual course would have been to have cross-examined them, if there was any foundation for it. I cannot help thinking that it is as gratuitous a piece of invention as can be conceived. Moreover, there was a body of evidence to show that Roger was not placed in any cottage. If the evidence of such people as Father Bird, Father Mann, and the Stonyhurst witnesses can be believed, he did not go into a cottage at all, but was located, as he ought to have been, in the quarters of the philosophers; that is to say, in the first instance in the college until the philosophers were transferred to the seminary, and then at the seminary. Not only those connected with the college say this was so, but Humphreys, the attendant on the philosophers, tells you the number of Tichborne's room, which he occupied in the philosophers' quarters.

But even supposing you could adopt this, I must say, wild and extravagant theory of the learned counsel, of this disorder of fifteen or sixteen months' duration, of which no one heard anything before his speech to you, and of which there is not a tittle of evidence, either extracted from the witnesses for the prosecution, or advanced on the part of the defendant by witnesses called in his behalf, the difficulty still remains arising from the defendant's statement that when he ceased to live in the cottage he went to live in the college, and the long cross-examination and the wrangling between himself and the Solicitor-General all arises from this, that he says that when he left the cottage he went to live in the quadrangle—on one side of the quadrangle. But, except for the first month Roger was there, the philosophers never were in the college during his time, as is proved not only by the oral testimony of the witnesses from Stonyhurst, which is perfectly unanimous on the point, but by the books which contain a record of the transfer of the philosophers from the college to the seminary; and then, after Roger had left, of their removal back again to the college; and they show that at no time during the residence of Roger at Stonyhurst could he, if he had lived in the cottage at the time stated, have gone back to the college. He would have gone to the seminary, and of that seminary the defendant knows nothing. He supposes—whether his memory fails him or not I do not know—but he supposes, and states as a fact, that at the end of fifteen or eighteen months he went to the philosophers' quarters in the college; and when asked whether he was ever in the seminary he does not even know the name, and supposes it means the cemetery. I cannot

alter these facts: there they are, and on them you must form your judgment as to whether or not such a representation is consistent with the knowledge and recollections which Roger must have had of his residence at Stonyhurst during the period in question. So that it stands thus: there is no cottage, not even that confectionery cottage, in which a philosopher could have resided. It would have been wholly inconsistent with the discipline of Stonyhurst that a young man should live other than in the proper quarters assigned to the philosophers, whether in the college itself, or in the seminary, within the precincts of the institution, and where they could be constantly under the control and surveillance of the Fathers who lived in that part of the establishment. In the next place, besides that, it stands to reason that no young man would be allowed to live in such a place, without there was some powerful cause for it. There is no trace of any such cause in the present instance. The question then is, whether you can believe the statement of the defendant that he did live in a cottage, and for that time; and that he afterwards went into the college; and if you can believe neither of those statements, then the further question is, whether you think that Roger could by possibility have fallen into such strange confusion as that which these statements involve.

Another thing connected with the residence at Stonyhurst relates to the body of the philosophers at large. It is clear from the evidence that each philosopher had a separate room, which was at once his bedroom and his sitting-room, when he was disposed to be alone, and devoting himself to study. There were the common rooms downstairs for the different purposes for which those rooms were wanted, but each man had his separate room, and in no instance, so far as the evidence goes (and there is a large body of it all uniform on the point), did two philosophers occupy the same room. Let us see what the defendant says upon that. It is immediately connected with the preceding part of the inquiry; it is another instance in which his memory might be tested. He is asked, "Did the philosophers have dormitories?—They had sleeping apartments. Q. More than one slept in the same apartment?—Yes, a great many. Q. Of the philosophers?—Yes. Q. That you swear?—I will swear that there was more than one in each apartment. Q. You will swear that?—You asked whether there was more than one in each apartment.—By dormitory, I understood a room in which more than one slept. Q. Yes. Do you mean to swear that the philosophers slept more than one together?—Yes. Q. That you swear?—Yes. Q. Were their dormitories, as you call them, separate from the rooms where they were by day in a separate part of the building, on the same floor or a different floor?—A different floor. Q. On a different floor? Had the philosophers sitting-rooms?—Yes, some had. Q. Did



I hear you say some had, not all?—I think not all. *Q.* You think not all; had you?—Yes, I had at the cottage. *Q.* You had what?—I had. *Q.* You had a separate sitting-room to yourself?—Yes. *Q.* And a bed-room?—Yes. *Q.* That you swear?—That I swear. *Q.* You have no doubt about that?—No, I have no doubt of that. *Q.* Your memory serves you for that?—Yes. *Q.* And the eighty or ninety philosophers, had they each of them separate rooms?—No, I told you I think not. *Q.* Had most of them?—There might have been exceptions, but really I cannot tell. *Q.* Had most of them? Was the general rule for the eighty or ninety philosophers to have separate rooms?—No, I think not as a general rule. *Q.* You think not as a general rule?—Yes. *Q.* You mean that the general rule was for them to sit altogether in a body, or what?—Yes, they generally sat in a body. *Q.* Where was the sitting-room, where the general mass, not all, but the general mass of these eighty or ninety philosophers were? where was the sitting-room?—There was a sitting-room on the first floor. *Q.* Is that where they used to sit?—A great many sat there. *Q.* What do you mean by a great many? Give me a notion. I do not expect to one or two. What do you mean by a great many?—Seventeen, or eighteen, or twenty. *Q.* Seventeen or eighteen or twenty, together, used to sit in this sitting-room?—Yes. *Q.* They had separate bed-rooms, most of them, had they?—I did not say so. *Q.* But had they?—No. *Q.* Most of them had not?—I think so. *Q.* Did you say most of them had not?—I said the majority of them slept, some in each, not in separate rooms. *Q.* Just so; so I thought you said. How many slept together?—I really cannot tell how many; from sixteen to eighteen, or something about that.” Now, that we know was the outside number of the whole philosophers put together; but the defendant makes as many as sixteen or eighteen sleep in one room. “**THE SOLICITOR-GENERAL :** I do not expect you to be particular to one or two, that was the number. I will give you the outside—from twelve to twenty?—Yes; from twelve to twenty. *Q.* From twelve to twenty slept together, that you are quite certain of?—I am not certain. I only speak from memory. *Q.* Had you any doubt about it?—I have no doubt.” Now you know, in the first place, if the Stonyhurst evidence is to be relied upon at all—and there has been no attempt to refute it—it is conclusive on the point that every philosopher had a room to himself. Humphreys says it as well as the rest; and he says that Roger occupied No. 3, in the first gallery. “Did he occupy that room during the whole of the time he was there?—Yes. *Q.* That was his room?—All the time. *Q.* Had he that room to his own use?—Yes. *Q.* How did the philosophers live as regards their rooms? Had each of them a separate room?—A separate room to himself. *Q.* Did they ever sleep together in a dormitory to the number of

twelve or twenty?—Never in my time”—nor in the time of anybody else who was called before us. What I cannot help thinking is, that the defendant has confounded in this statement the students with the philosophers; and that either from some inexplicable confusion in his recollection as Roger, or from some information he has derived since, he has learned that, the number of students being between 150 and 180, those students had dormitories, as is the case sometimes in large establishments of this sort, and that in those dormitories a considerable number slept; that he has lost sight of the fact that the philosophers, the young men, the adults, had separate rooms to themselves; and that the whole number of philosophers did not amount to more than twenty—the number that he put into one and the same dormitory. A serious mistake certainly; and it is for you to say whether you think these mistakes are owing to defective memory, or arise from want of original knowledge. That they are serious mistakes, cannot, I think, be doubted.

Now the next thing you would probably expect a young man to remember is the localities connected with the institution. Stonyhurst, of which we have had pictorial representations before us, is a remarkable place in some respects. The defendant is asked, “What sort of a place is it? Is it a large building?—A very large building.” We know it is so. “Q. You say you do not know a place called the seminary. What kind of range of buildings is there there besides the actual college of Stonyhurst, the connected mass of buildings? what detached buildings? Are there any?” Now the seminary is a detached building, but the defendant answers, “There is the church. Q. The church? What else?—I do not remember any other. Q. You can see the church from the road?—Yes, I should think you could. Q. What is there besides the church? Detached buildings? Are there any others at all?—I do not remember any others.” So that he not only does not remember the seminary by name, as the place in which the body of philosophers resided, but he does not remember the existence of any detached building except the church. Then he is asked about the playground. That is a thing a young lad, or even a young man of seventeen or eighteen, would be likely to remember—as the place of the out-door recreations in which the natural activity of youth finds its scope, and I take it that the ground where he played cricket or foot-ball would remain in his memory afterwards. “Q. What sort of playgrounds are there?—There is a playground both in back and front. Q. There is a playground both in back and front?—There is a lawn in front. Q. Did you say playground in back and front?—There is the front lawn; there is the front to it; there is the ground in front. Q. Is that the playground?—No. Q. I am asking you now about the playground; what playground is there at Stonyhurst?—There is a large

extent of ground at the back. *Q.* ‘ There is a large extent of ground at the back:’ is that what you say?—Yes. *Q.* Has it got any name?—I do not know that it has any particular name to it.” Then the Solicitor-General, who evidently had pleasant recollections floating about his mind, says: “ There are the school-fields at Eton, and the play-fields at Winchester, and so on. Is there any name to it?—I am not aware of any name. *Q.* It did not go by any name?—I do not remember any name just at this moment.” The defendant was right so far as the playground having no particular name went, but was wrong as to there being a playground at the back, because we know it was at the side of the building at the back of the church. But when, having said it was at the back, the Solicitor-General presses him further, and asks him the question I have just referred to, whether the playground had not, as at some great English public schools, a particular name, and he says he is not aware of any name, he goes on to describe it by saying, “ It extended down to the Ribble.” Now we know from the maps and the evidence that the River Ribble is not within a mile of the Stonyhurst establishment, and that there are fields intervening between.

He is next asked whether there was any branch establishment immediately connected with Stonyhurst. Here we get an answer which deserves to be noticed. “ Were there any branch establishments or institutions connected with Stonyhurst, which supplied it with pupils from time to time? Do you remember how that was?—No, I do not. *Q.* Can you give me the names of any of them if such there were?—I have just said I do not remember there was any. *Q.* Where is Hurst Green? Do you know the name?—No, I do not know where it is.” You will remember as one instance of his recollection, which was put prominently forward when he satisfied the drawing-master of his identity, that not only he remembered Hurst Green, but old Betty who lived there; but at the time of his examination, on the trial, he did not know even the name of Hurst Green. Then he is asked, “ Where is Hodder?” Now we know something about Hodder. Hodder is an establishment where the boys who are too young to be admitted to the classes in college are prepared for admission, and it is also resorted to and partly occupied by the novices who are getting up their theology. The defendant is asked, “ Where is Hodder?” And his answer is, “ It is an establishment, I think, on the banks of the Hodder, and which they go to in retreat. *Q.* Is the Hodder a river, or what?—The Hodder is a river. *Q.* What is the place called the Hodder?—There is a building there; I do not know whether it is called Hodder or not. *Q.* There is a building there? What is in the building?—What is in the building? *Q.* Yes, what is going on in the building?—It is



generally where the fathers go to retreat in. *Q.* It is generally where the fathers go to retreat, do they, to Hodder?—Yes. *Q.* How far from Stonyhurst is Hodder, where the fathers generally go to retreat?—About a quarter of a mile, I think; I have no recollection.

*Q.* That is where the fathers go to retreat, is it?—When you were there three years that is where they went when they went to retreat?—No, I do not know that they did go there; I have some remembrance of it.

*Q.* But there is a building you say about a quarter of a mile from Stonyhurst which you believe is called Hodder, where the fathers went to retreat, you believe. I suppose that is what you mean that they did when you knew Stonyhurst?—I fancied so.

*Q.* Is that what you mean?—I fancied so. *Q.* Do not you know?—I do not, for certain, know the fathers used to go there to retreat, but I think so.

*Q.* What made you fancy it?—Because I have an impression that it is so. *Q.* But why? Did you ever see them going there, or what? What made you have the impression? The fathers going there to retreat would be a thing you would know about after three years at Stonyhurst. What made you have the impression that the fathers went to retreat at Hodder?—I do not know what made me have it. I have that impression.

*Q.* Did you ever see them going, or hear of them being in retreat there?—I must have heard of it, I suppose. *Q.* But cannot you tell me—a quarter of a mile from Stonyhurst—is that all you can tell me? You must, you suppose, have heard of it; therefore you have an impression that the fathers used to go into retreat there. How long does the retreat last?—I cannot tell you how long.

*Q.* I do not ask you to a day, but how long is it—a week or a month, or six months, or what?—It is less than a month, I think. *Q.* Is it somewhere between a week and a month, then?—Yes, that is about it.” Then he is pressed as to what becomes of the Hodder during the other eleven months, and says, “I do not know.

*Q.* What went on there?—I do not remember. *Q.* You say it was an establishment—an establishment of what? What was done at Hodder during the other eleven months of the year?—I do not know what was done.” “Should you be surprised to find,” says the Solicitor-General, “that Hodder was the place always full of a class called the novices, who were there for two years of their course after leaving Stonyhurst, and before they took orders? would that surprise you?—No, it does not surprise me in the least. *Q.* Had you forgotten that?—I did not remember it. *Q.* Did you really mean that you did not remember now what this regular establishment in connection with Stonyhurst, and where a certain class of the Stonyhurst pupils regularly went and regularly stayed for two years, was?—do you mean really that you have forgotten?—Yes, I do not remember it.” So much for the branch establishment.

I now come to a still more important topic, and that is his Stonyhurst studies, because I cannot think that a young lad of seventeen to twenty can wholly forget what the subjects were to which his studies were directed during the time he was in the upper classes of a public school or college, as the case may be. I look upon this institution as something between the two. Well, of course, on his knowledge being probed, when they came to the subject of his education they would naturally question him upon it; and accordingly Mr. Chapman Barber, on the preliminary examination, says, "Did you learn Latin at Stonyhurst?—A little. Q. What books did you read?—I do not remember. Q. Not any one of them?—No, none of them. Q. Do you remember the name of the Latin master?—No, I do not. Q. Did you learn any Greek at Stonyhurst?—I do not remember whether I did or not." I can quite understand a man forgetting his Greek; unfortunately the greater number of those who spend a part of their time in acquiring it, forget it afterwards. The difficulty is in supposing that when a man has once learned any Greek, he would not remember whether he had done so or not. The defendant says, "I do not remember whether I did or not. Q. What mathematics did you learn at Stonyhurst?—I do not remember. Q. Did you do Latin exercises?—Yes, of course, I went through the general course of college education. Q. What was the course?—I do not remember. Q. Were there examinations at the college?—There was. Q. How often?—I do not remember." So that Latin, you see, is the only thing he remembered about. There is no knowledge of mathematics and still less of Greek or Hebrew. Now in the examination-in-chief on the trial this matter of study is dismissed in a very perfunctory way. "You have told us," says Mr. Giffard, "what sort of a student you were under Chatillon; were you a diligent student at Stonyhurst or not?—I did not quite catch your question. Q. I want to know whether you read hard, and were a diligent student at Stonyhurst, or whether you were an idle student?—I think an idle one." Then, on cross-examination, the defendant having said that he went through the ordinary course—learning spelling and grammar, a little history and a little arithmetic, which latter he says was the same as the French—which, however, appears to have been a mistake—and that in his first year he read modern history, and afterwards ancient history—the Solicitor-General says, "Now, I will first ask: you say you went through the ordinary course, and that Father Sede, and I think you said Father Etheridge, instructed you?—Yes, I believe so. Q. You say Father Sede took you in English, and the elements, and so on: What was the course at Stonyhurst as far as you pursued it? You say the ordinary college instruction. Colleges differ; what was the course, as you pursued it at Stonyhurst?—I do not exactly understand what you mean? Q. You say that in your first year you

did the elements of grammar and spelling, and a little history and a little arithmetic, which was the same as French arithmetic. What else did you do? What was your college course? It hardly represents three years of college course?—You mean during the whole time? Yes, what lectures? What did you do? What lectures did you attend?—I attended lectures in Hebrew, Latin, and Greek.” Then the Chief Justice says, “Greek, did you say?” and the defendant answers, “Yes.” Now you see on the preliminary examination he had said he did not remember whether he had learnt Greek at Stonyhurst at all. Here he says he attended lectures in Hebrew, Latin, and Greek. “The SOLICITOR-GENERAL: I am afraid I cannot test you in Hebrew: can you read Hebrew now?—Not a word of it.” That I do not wonder at. A man may have learnt a little of the first rudiments of the Hebrew language, and probably have forgotten it very fast if he had not gone further. But there follows a very different question, as to which it is difficult to satisfy one’s self that a man would be likely to forget: “Is there any difference (I do know as much as that) in the reading of Hebrew from the reading of any other language?—A great difference. Q. What?—I cannot explain to you what it is. Q. Is there any physical difference—any external difference—I am not speaking of learning it as a language.—I mean reading—I do not mean as a language; I mean the different phrases. Q. Hebrew phrases?—Yes. Q. Before you learnt Hebrew phrases, I suppose you learnt the Hebrew alphabet?—Very likely I did; I do not remember. Q. Before you can read a phrase you must read the letters in which a phrase is written?—Just so. Q. Did you learn the Hebrew alphabet?—I paid very little attention to any of it. Q. Did you learn the Hebrew alphabet is my question?—I do not remember whether I did or not. Q. Surely you can recollect whether you learnt the Hebrew alphabet or not?—I do not remember whether I learnt the whole alphabet or not. Q. Whether you learnt the Hebrew alphabet or not?—Yes. Q. Did you ever read a phrase of Hebrew?—I do not know I ever read one. I know I was studying it for some time. Q. Surely if you studied it for some time you must have got as far as the alphabet?—No doubt I did learn it. Q. I mean the alphabet is not very far in a language. You suppose you did. What was the first letter of the Hebrew alphabet?—I have no recollection. Q. Cannot you tell me any marked difference in the reading of Hebrew from the reading of English, or Latin, or French?—No, I have no recollection of the Latin or Greek either. Q. Which way is it read, do you know? Do you know which way Hebrew is read?—I have no recollection whatever of it. Q. That you cannot tell. My own acquaintance with Hebrew certainly is elementary; therefore I cannot go very much deeper. You never got so far as to ascertain it was read from



right to left instead of left to right?—I do not remember that.” Now, gentlemen, that is perfectly elementary in the matter of the Hebrew language, and it is a thing known to most persons who know nothing whatever of that language. I do not think I should be able to tell you the difference between one Hebrew letter and another, but still one knows there is this marked peculiarity in that language that, whereas in all other languages—at all events with which we are familiar—you read from left to right, you read Hebrew in exactly the opposite way. Then the question is whether anybody who had gone to the beginning of the language, could forget the fact that in learning to read it you must begin at the opposite end—a very puzzling thing, as, being in the habit of reading in the opposite direction, it takes one some time before you can get into the habit of reversing the order? But a still greater difficulty is this: Is there any one of you who can believe that Roger ever learnt Hebrew at all? Except the Jesuit novices and those intended for the Church, with whom the study of Hebrew would be part of their theological training, the evidence tells us that there was no one at that time who could have taught any Hebrew at all to any philosopher or student, while they remained in those two classes; there was no one who was bound to take or who would have taken that trouble. Besides, looking to the very imperfect character of Roger’s education, one cannot suppose that he would lose time in learning that which few people except those intended to play a theological part in the world ever learn.

Next we come to the Greek. “You learned Greek?—Yes, some portion of Greek. Q. ‘A portion of Greek:’ Greek is a large subject?—It was very little. Q. Did your studies in Greek go as far as the alphabet?—I do not remember how far they went. Q. If they did not go as far as the Greek alphabet, they did not go very far?—When I first went there I was not like an ordinary scholar who was prepared for it; I went unprepared, and that made a great difference. Q. Everybody must make a beginning. Did you learn the Greek alphabet?—Probably I did. Q. Did you ever get so far as to read a phrase in the Greek Testament?—Not to read a whole phrase, but to understand some of it. Q. Not to do what?—Not to read a whole phrase. Q. Could you read Greek at that time?—Yes, I think I could make out a sentence. Q. I will not ask you to construe. Do you think you could read the first verse of the first chapter of St. John, now?—I am quite certain I could not. Q. Could you even read the Greek letters?—No. Q. Does any single Greek word now linger in your memory?—Not one of any description; I do not think I have ever thought of it. Q. Did you get so far as the articles?—I do not recollect how far. Q. Do you recollect the Greek word ‘and?’ Matthew, Mark, Luke and John?

Could you give us the ‘and’ in Greek?” I suppose the Solicitor-General pitched on the very easiest word—the “and,” which occurs in almost every sentence, and which, therefore, anybody would be likely to recollect as a simple word; but the defendant answers, “My recollection is gone entirely. Q. Could you not give me ‘and’ in Greek?—I am not going to do anything of the kind. Q. You have lost it entirely, have you?—Entirely. Q. Hebrew and Greek, and I think you said Latin?—Yes. Q. Did you get on better in Latin?—I believe I went further in Latin than anything else. Q. Did you learn the Latin alphabet?—Yes, of course, I should have to do that. Q. Could you read Latin?—I believe then I could. Q. Do you think you could read me a line of Latin now?—I am quite certain I could not. Q. How far did you get in Latin?—Really, I do not remember how far I got in Latin. Q. Did you read any Virgil?—I do not remember how far I got. Q. Cæsar? Did you ever do a bit of Cæsar?—I do not remember, I tell you, how far I got. Q. Do you recollect whether Cæsar was written in verse or prose?—No, I do not.” Now if we pause here and recall the evidence, we shall be reminded that although Roger never was a scholar, he did read some of Cæsar; that he got through the first book at all events; that at the end of the year 1846, or between that and 1847, while he was in the middle of his career at Stonyhurst, he had got so far in Latin, that at an examination which took place before the authorities there, he was put to construe some portion of the first book of Cæsar, and Father Mann, who examined him on that occasion, says he got through it very fairly. Then, supposing Roger to have read any portion of Cæsar, would he tell you he did not know whether it was written in verse or prose? I presume he would know it at the time. He would not be like the character in Molière, who was very much surprised at being told he had been speaking prose all his life, and was not aware of it. I suppose Roger, at the time he was reading Cæsar, would know the difference between the way in which verse is written, either in some metre or rhyme, as the case may be, and the way in which prose is written. You know the difference between verse and prose when you read it; you do not want to be taught that; and I take for granted that Roger, when reading Cæsar, knew whether it was in verse or prose. “Q. Do you recollect whether Cæsar was written in verse or prose?—No, I do not. Q. Are you quite sure? Did you ever do any Cæsar?—I might have done; I tell you I have no recollection. Q. I know you might; what I want to know is whether you did. Did you ever do any Cæsar?—I do not remember whether I did or not. Q. Is Cæsar a Latin writer or a Greek? Do you know? What is your recollection of it? Perhaps you do not remember?” To which comes the memorable answer, “I should suppose Cæsar is Greek,” on which the Solicitor-General observes,

with bitter irony, "I suppose that was the Stonyhurst edition." The defendant supposes him earnest, and says, "I cannot say whether it was or not." Cæsar a Greek! Would Roger, do you think, have made that mistake? When Roger read Cæsar did he believe he was reading Latin or did he believe he was reading Greek? Is that a thing about which a person could make a mistake? You sit down to learn French, and you have some easy book put into your hands, which you are called upon to translate, with a view of learning the language. I remember in my young days the "Adventures of Telemachus," by Fénelon, was the standard school book for boys learning French. I suppose any one who was put to study Fénelon, would know that he was reading French and not German; and if the book was put into his hands in after-life, he might not have carried his study of the French language to the extent necessary to make him familiar with it, and he may have forgotten every word of the French language, and if Fénelon's work were put into his hands, and he was asked to translate a passage, he might totally fail; and I dare say if Roger had been asked, even two or three years after he left Stonyhurst, to translate a passage in the first book of Cæsar, he might have broken down before he was half through it; but the question is, would a student of French when Telemachus was put into his hands—would a student of Latin when Cæsar was put into his hands, although he might totally fail to construe the passage he was asked to translate, fail to know that the language was French in the one case and Latin in the other? Still greater, if he had ever learnt any Greek, would be the improbability of his mistaking a Latin work, which he had once read, for Greek. If, as the defendant says, he had so far mastered the alphabet and the first rudiments of Greek, as to be able to construe parts of passages in the Greek Testament, could he make a mistake between the Greek and Latin type? You know how essentially different they are. We had the books here in order that any of you who are not familiar with Greek (for it is not everybody who has had an opportunity of studying it) might see that the characters were essentially different. Would a person who had learned Greek, on having a Latin book put into his hands, confound one type with the other, and suppose Latin was Greek? Either the defendant tells us the truth or he does not, when he says he learnt Greek. If he did learn Greek, he also learnt Latin; he would be familiar with the Latin type, and though he might not remember one word of the language, he would not mistake Latin for Greek. Take the case of French and German. French is printed in letters common to the other languages of Europe; German is in a totally different character, as different as the Greek is from the Latin. You may learn French or German, and forget both; but, could you mistake



the one type or other? Is it possible, supposing he ever learnt Greek, to mistake the two? And if, on the other hand, you think this statement about Greek, and his being able to read a passage in Greek, must be dismissed as not the fact, still we have the fact that Roger read Latin. There is not a tittle of evidence to show that he ever opened a Greek book in his life; and the probability is that, being so backward in his learning, he never did learn Greek; but still he did learn Latin, and must have known that he was not learning Greek, and must have been perfectly aware, when reading Cæsar, that it was not in Greek, but in Latin. Moreover, as Roger Tichborne passed in history at the Sandhurst examination, he must have read some history, and though his study of history may have been of a most elementary character, it is difficult to suppose he did not know enough of Roman history to know that Cæsar was a Roman, and not a Greek. Do you think that is what a man would be likely to forget?

The JURY: I forget whether the defendant was ever tried to see whether he could read from a French book.

The LORD CHIEF JUSTICE: I am not aware. If he had been asked, he would certainly have been unable to do so, because I remember that Lord Chief Justice Bovill, when trying the former case, inquired of him whether he had any recollection of French, and his answer was that he had not any recollection even of the letters.

Then he is asked about the "menstruum," and he is asked whether he should be surprised to find that Roger construed a good deal of Cæsar at a menstruum. "No," he says, "I should not be at all surprised." I can quite understand that the term for an examination at Stonyhurst might well slip out of a man's memory. We must not be too hard, and exact too much. If he had been examined at a menstruum, it might be difficult to suppose he could have forgotten it, but he never was. A menstruum was a monthly examination of the students, but it was not applicable to the philosophers, and this examination at which Roger translated some Cæsar cannot, I think, fairly be taken to have been one of those monthly examinations called a menstruum. It was a special and exceptional examination which took place now and then to see how the young men were getting on, to stimulate them to a little additional exertion. Then he is asked, "Do you recollect doing it?" And he says, "No, I have no recollection of it. Q. Do you recollect a menstruum now?—I do not know what you mean by a menstruum. Q. I have told you, a monthly examination: who, according to your recollection, prepared you for your construing Cæsar at a menstruum, the Greek author whom you have spoken of?—I do not remember who it was. Q. Do

you recollect whether it was in Latin or Greek that you construed Cæsar at the menstruum?—I have no recollection of what I did. *Q.* Is Virgil Latin or Greek—is he prose or poetry? **LORD CHIEF JUSTICE BOVILL:** One question at a time. **THE SOLICITOR-GENERAL:** Virgil. What do you say to Virgil?—I have no recollection. *Q.* You have no recollection of Virgil at all. Now just look at that book (a copy of Virgil's works was handed to him). Did you ever hear of Virgil?—No doubt I have. *Q.* Who is he?—I do not know; I have no doubt I have heard of it. *Q.* What is he? Is he a general, a statesman, or what? What is he? What is Virgil?—I told you just now I have no recollection. *Q.* You totally forget now; you have no recollection; do you know what he wrote about, geography, or what?—No, I have no recollection whatever; never thought of it from that day to this, I am sure. *Q.* Was he a Greek or Latin writer? Do you know?—I do not know. *Q.* Did he write verse or prose?—I do not recollect; my recollection is entirely gone. *Q.* Just look and see if you ever saw that book before. Did you ever see that book before?—I really could not say whether I have seen it before. *Q.* Open it. It will not hurt you. Look at the inside. What does it look like? By the look of it you have got the beginning or preface. Turn to the middle part of the book, where the substance of it is?—I do not want to look at it. You asked me to do so. *Q.* Just look at the middle?—I will look at the middle. *Q.* What does that look like? Did you ever see it before?—I do not know. I could not say I ever saw it before. *Q.* Could you read a line of it?—I am not going to attempt it. **THE LORD CHIEF JUSTICE:** Is it Greek, Latin, or Hebrew? **THE SOLICITOR-GENERAL:** What is it? Greek, Latin, Hebrew, or what?—It appears to me to be Greek. I told you before I could not tell you Greek from Latin. I do not profess to do it." **THE Solicitor-General** again makes an ironical observation: "It looks to you like Greek; in short, it is Greek to you."

Gentlemen, I do not know whether Roger ever read Virgil, but I think he must have known who Virgil was, and what he wrote about, because amongst the list of books which I find in his memorandum book, no doubt as books he intended to buy, is Virgil. Whether he did buy the book or not I do not know, because his books were, unfortunately, dispersed—they were sold at one of the forced sales and executions which took place in Alfred's time, and whether he ever had a Virgil I do not know—but that he had some idea of Virgil's writings is proved by the entry in the memorandum-book, in which he puts down Virgil as one of the books he intended to buy. If the defendant had ever known of Virgil, the name in the title page would have told him what the book was. If he had learnt any Latin

at all, the mere opening of the book, the first words that caught his eye, would, at all events, have told him it was in the Latin language, and if he ever saw a Greek word in his life he must have known it was not Greek.

Then the Solicitor-General takes him to another study, and asks, "Did you learn any mathematics?—Yes. Q. You did learn mathematics?—Yes. Q. You did learn mathematics. That is something. How far did you go in the mathematics?—Really, I cannot say; it is nonsense asking me; my recollection does not carry me back. Q. What?—It does not carry me back how far I went in anything. Q. What mathematics did you read?—I have no recollection whatever." Now comes the question to which I should have thought anybody who had ever learnt mathematics would have been able to give some answer: "What is your notion of mathematics? What do you mean by mathematics? You say you learnt them. What did you learn?—It is so many years ago I do not remember: I have entirely forgot what I learnt. Q. When you say mathematics, what do you mean by mathematics? What are mathematics all about? What did you learn? I will not ask you how far you went, but what sort of thing did you learn in mathematics?—I have no recollection what I learnt. Q. You have no recollection what you learnt?—No. Q. Is it the same thing as chemistry?—No, I should hardly think it was. I will not answer, because I have no recollection of it. Q. You can surely tell me whether it is the same thing as chemistry. Is it the same thing? Is chemistry a branch of mathematics?—I should think not; my recollection will not serve me, and therefore I cannot answer. Q. You may not be able to do either mathematics or chemistry; but is chemistry a branch of mathematics? or is mathematics a branch of chemistry?—Neither one nor the other; chemistry is a science by itself. Q. What is mathematics?—I have no recollection. Q. With whom did you read mathematics?—I am sure I do not recollect. Q. What book in mathematics did you ever read?—I have not the slightest notion; I have not the slightest recollection. Q. What is mathematics? Is it a language, or what? Greek or Latin, or Hebrew, or French, or what? What is it written in, can you tell me?—No, I cannot. Q. Do you know who you read it with?—No, I do not remember. Q. You do not know who you read it with?—No. Q. Did you ever read Euclid?—I do not recollect whether I did or not. Q. Has Euclid anything to do with mathematics or not?—Certainly not. It might be. I have no recollection. Q. Has algebra anything to do with mathematics?—I have no recollection; that is why you are taking advantage of me. Q. Taking advantage of you! Can you tell me whether you did in fact read any Euclid or not?—No, I cannot tell. I believe I did, but I could not say. Q. You believe you did?—I believe I did. I



have no recollection of it now. *Q.* You say it has nothing to do with mathematics. What is it written in? what language?—I have not the slightest recollection of it. I have never thought of it from that day to this. *Q.* Did you ever hear of the Asses' Bridge?—I do not recollect. *Q.* Did you ever try to get over it? Do you know what it is?—No, I do not. *Q.* Where would you look to find the Asses' Bridge?—(No answer). *Q.* Did you ever try to cross the Asses' Bridge?—I do not know. Probably I have. *Q.* Did you say yes or no?—I tell you I have no recollection of it. *Q.* Did anybody try to help you over the Asses' Bridge? Do you recollect whether anybody tried his best to help you over the Asses' Bridge? Did you ever make gallant efforts, as many of us do, to get over it?—I have no recollection of it. *Q.* You do not know what it is?—I have no recollection. *Q.* Do you know whereabouts it is—how far from Stonyhurst?—I can put up with all your insulting. *Q.* Do you know it under its Latin title? Perhaps that would bring it home to you—*pons asinorum*?—I have no recollection of it. *Q.* You cannot recollect anybody doing his very best to help you over that structure?—I should advise you to joke a little less over this."

That is the cross-examination with regard to mathematics. Let us just consider for a moment what Roger's position with regard to that science was. We know that he studied it at Stonyhurst. One of the Fathers, Father Mann, tells us that he took him through the first book of Euclid, in the second year Roger was at Stonyhurst; after that Father Mann left. Whether Roger went on with mathematics after that second year at Stonyhurst we have no evidence, but the probability is, I should think, that if he was studying Euclid, and got to the end of the first book, and had still a year to remain, he would have gone on with the further study of it; but besides that, we know that, when Roger had received the promise of his commission from the Horse Guards, on which he would be required to pass an examination, believing that mathematics would form one of the subjects, he took to reading his mathematics diligently. Mr. Gosford tells us that he used to come and sit in his office at Tichborne. He had a seat on one side of Mr. Gosford's desk, and there he used to work at his problems, and Mr. Gosford said there was a box full of them, and if he had thought it would ever have come to this, he would have preserved them to show how this young man worked at his mathematics in order to pass his examination. We know that not only did he work for himself in this way, but he also went to a gentleman of the name of Moberly, at Owlesbury, and read for some time with him. He first applied to the mathematical master at Winchester, who, however, had no time to give to him, and then he took to reading with this gentleman at Owlesbury. It so happened, however, that he was not examined in

mathematics, in which probably he would have passed, as very much was not required at these examinations, but in arithmetic, and he failed in that department. Then he went up to London to read mathematics with some teacher there, that he might be more efficiently instructed, but his friends got the authorities to dispense with the second examination to which he would otherwise have been subjected, and to allow him to join his regiment at once on his getting a certificate of a certain degree of mathematical proficiency, and that certificate he got. When in the army he expected a further examination in mathematics before getting his lieutenancy, and he writes to say that he considers himself very fortunate in his having had an examination on mere regimental matters instead of a general one; because, if he had been expected to answer in the six books of Euclid he believes he should have failed; so that he perfectly well knew the number of the books in which that great geometrician composed his work. Now, I dare say, if any one had very shortly afterwards put it to him to do a problem in one of the books of Euclid, very likely he would not have been able to do it. I dare say it was hard work for him. He had no genius for mathematics; he could not for some time get over that difficult structure the Asses' Bridge, and had to pass that by, and assume the proposition as proved, and come back to it, but in the end he succeeded in getting over it. Could Roger have forgotten all this? He might have forgotten every problem in Euclid, and not have been able to do one; but could he have wholly failed at any time in his life to know what mathematics was about? He might have given you a very imperfect answer; he might have told you no more than that it was about lines, or the combination of lines in the shape of angles, or triangles, or quadrangles, or the properties of the circle, or proportion—a very vague and unscientific answer; but could he have failed altogether to know what it was about? And it was not confined altogether to the way in which Roger worked the problems in Euclid. The defendant has forgotten the name of Euclid. Could a man, who had no genius or aptitude for it, but who worked at Euclid, though it might have been against the grain, with the hard study that Roger did, have forgotten what Euclid was about, and have lost all remembrance even of the name? That is the defendant's state of knowledge on these subjects. Moreover, though Roger's study may have been confined to elementary mathematics, he was quite aware of the other branches of the science, the analytical part of it—not, I dare say, that he ever went very far even into the rudiments of algebra, or the higher range of mathematical science; but in the memorandum-book, which contains a note of the books he meant to buy, works in the higher class of analytical mathematics are enumerated as books he intended to purchase. Among these are French works of great repute. Besides

the Geometry of Legendre, there is the Algebra of Lacroix, the Trigonometry of the same author, the Integral and Differential Calculus of Francoeur. It is more than probable that he never bought one of these works, and if he did, that he never opened it ; but still a list of such works made out for the purpose of purchase shows he was aware of the different subjects of mathematical science, and what the range of this science was, and what things it comprehended. The question is, whether all this can have been so entirely obliterated from his mind as that he should exhibit the utter ignorance shown by the defendant of what "mathematics" really means? I do not say it is not so; it may be; you may adopt the theory of his counsel that his memory is gone, that his residence in Australia has effaced from his mind every trace of knowledge that was ever contained in it. All I have to do is to call attention to the fact that Roger must have known what mathematics meant, and that the defendant, on his examination, undoubtedly did not.

Then he is asked about chemistry. We were told that Roger followed a course of lectures on chemistry at Stonyhurst. The defendant is asked: "Did you learn any chemistry?—To the best of my recollection, I believe I did, but I have no recollection what it was. Q. Cannot you tell me even as much as that, whether you learnt a little bit of chemistry at Stonyhurst?—No, I cannot, I know I learnt some." Thereupon the question follows, "What is chemistry about?—It is about chemistry, of course. Q. History is about history, Greek is about Greek. That does not help us much. What is chemistry concerned about?—Chemistry is different herbs and different poisons—mixture of medicines." I made an observation or two the other day on chemistry—a science which I wish I had more leisure to cultivate than I have ever had, but which I look upon as one of the greatest sciences with which man can be familiar. Would a man who had attended even an elementary course of lectures say that that great science was "different herbs and poisons and mixture of medicines?" The SOLICITOR-GENERAL: "Mixture of medicines?—Not only medicines, but the substance of them. Q. What is served out in a chemist's shop? The things you get in a chemist's shop?" To which he makes a facetious answer, "I think a dose of it would do you good." Some of his answers I have occasion to remark on as being very improper, and which I think ought at once to have been put down, but that is a good-natured answer which one would not quarrel with, and if I were examining a witness I should not mind that a bit. But I suppose there must have been something offensive in the tone of it, for Lord Chief Justice Bovill would appear to have been shocked by the answer, and did not like it, and reproved him for it, and he says: "I mentioned to you yesterday that, in my judgment, you do not assist your case in the least by those observations."



So I am afraid it was not an observation in good humour. The witness says, "It is very hard to keep my temper. I try my best. The SOLICITOR-GENERAL: Do you mean that chemistry deals with such things as are bought and sold in a chemist's shop?—It deals with such things as they are made of. Q. You see things put along the sides—drugs. Is that your notion?—I never took any notice of a chemist's shop. Q. Is it your notion that chemistry deals with the science of medicine?—Most undoubtedly." That is his notion of chemistry.

Then he is asked about philosophy. "Did you learn philosophy? Did you attend any lectures on philosophy, do you remember?—Yes, I believe I did. Q. What books did you read? What sort of philosophy?—I have no recollection. Q. Moral philosophy, or metaphysics, or what?—I have no recollection, I am sure. Q. Can you give me the name of any one book in philosophy which you read? What sort of philosophy it was, can you tell me that?—I have no recollection. Q. Was it metaphysical philosophy, or moral philosophy, or what else? Religious philosophy, or what?—I have no recollection. Q. Did you attend any lectures on physiology?—I do not remember attending any. Q. You do not remember attending any?—No. Q. Do you know what physiology is?—You mean different features, I suppose. Q. That is physiognomy. Do you know what physiology is?—Yes, it is on the formation of the head. Q. Is that your notion of physiology? 'On the formation of the head.' Did you attend any lectures on the formation of the head?—I do not think I did." He is evidently confounding it with phrenology. "Q. Did you attend any metaphysics, any lectures on metaphysics?—I do not remember whether I did or not. Q. Do you know what metaphysics are?—No, I do not know what you are alluding to. Q. When you were a philosopher, did you attend any lectures on metaphysics?—I have no recollection of doing so. Q. Do you know what they are? Do you know what it means?—I told you just now I do not know what it means." Well, I do not think Roger did attend lectures on metaphysics. He may have done so; but it is not altogether surprising that the defendant should not be prepared to answer whether Roger did or did not know what metaphysics may be. I remember reading the Attorney-General's address to the jury on the former trial, and I remember his definition of metaphysics very well. It is not his own, I believe, but repeated from some one else, that metaphysics consisted in "One fellow talking about what he did not understand to another fellow who did not understand him;" and certainly some of the metaphysics we have heard of in the course of this cause did seem to me to savour very much of that description.

So much for the studies, with one exception, because connected

with the Stonyhurst studies there were some letters which at first sight appeared somewhat mysterious. It seems they have a habit of prefixing to the Stonyhurst exercises certain letters, and appending to them certain others. The letters which are prefixed are "A.M.D.G.," and this being familiar to persons who have passed through a Stonyhurst examination, it was fair enough to put it to the defendant as a test of Stonyhurst knowledge. "What does A.M.D.G. mean?—I do not know, I am sure. Q. Was not A.M.D.G. put up in every public room, and almost every private room in Stonyhurst? Was it not put on every bit of paper, every exercise, every book, everything you used or did at Stonyhurst?—Well, if you say it I am not going to swear to it. Q. But I ask you: You are a Stonyhurst man and I am not. Was not A.M.D.G. put on every exercise and every book that was used down at Stonyhurst?—Well, I cannot say, for I do not remember whether it was or not. Q. Have you the least idea what it means?—I have not given it a thought. Q. Eh?—I have never given a thought to it. Q. You really mean to say you have no idea what A.M.D.G. means, you a Stonyhurst boy for three years?—I mean to say it does not flash across my memory what it was. Q. That you really mean to say? Do you mean to say you have forgotten that A.M.D.G. was put upon all the books, and at the head of every exercise and piece of work that you did on paper at Stonyhurst?—You will vouch that to be true, of course? Q. Have you forgotten? Is it the fact, I will ask you, is A.M.D.G. printed upon every book and stands at the head of every exercise and piece of work done at Stonyhurst?—All I can say, if it is, I do not recollect it. Q. You say, you do not remember that A.M.D.G. is printed on all the books you use, and every exercise or whatever you had to do, upon everything you used and had to do at Stonyhurst. You say, if that is true, you have entirely forgotten. Have you?—I do not remember that it is so." "Now," says the Attorney-General, "I will tell you what it means, and you will see whether you can remember it then;" but on this Lord Chief Justice Bovill says, "You are not entitled to tell him. You may ask him whether it means so and so. It comes to the same thing, but you may as well be regular. The SOLICITOR-GENERAL: Does not A.M.D.G. mean *ad majorem Dei gloriam*?"—to which the defendant, apparently relieved from his embarrassment, answers readily, "Yes, there is no doubt it does. Q. What does that mean in English? You, a Stonyhurst boy of three years, can tell me that?—There is God's glory in it, but I cannot tell what the first is." Well, the "God's glory" is simple enough, because the defendant, we know, is acquainted with Spanish; and while Roger might have forgotten his Latin, and yet might possibly have remembered the Spanish he learnt in South America, so the defendant, whether Roger or Arthur Orton, having been in

South America where they spoke Spanish, would know that “Dio-” and “gloria” are two words with which these two, “Dei” and “gloriam,” correspond. Then the Solicitor-General says, “What are the two first words, ‘ad majorem?’” There he is at a loss. He cannot answer that. What the sentence means, of course, is “to the greater glory of God.” Now there, again, though a man might have forgotten his Latin, and could not construe perhaps a single passage from a book with which at one time he might have been tolerably familiar, and though in the habit of prefixing to all his exercises done at Stonyhurst these four letters, might possibly forget what the letters stood for—though it is difficult to suppose it—when the words are brought back to his mind, and the meaning of two of the words are familiar to him from knowledge derived *aliunde*, would he have forgotten, do you think, the whole taken together? Roger must have known at Stonyhurst, where they prefixed those four letters to everything, what they stood for, and the meaning of them. Is that a thing he would be likely to forget, especially when brought back to his memory by the examination I have read to you?

Now we go to the three letters that were always appended to the bottom of the exercises, as the other four were affixed to the top. The Solicitor-General asks him: “What does that mean—L.D.S., and the answer is: “It looks very much like—really I do not remember what it means. Q. That you do not know either. Were not those letters printed on almost all the printed papers and bills, and matters that were printed at Stonyhurst?—Not to the extent that you try to represent. Q. Then you recollect that it was printed on many. You say not to the extent that I try to represent. Then it was printed to some extent, was it?—The top was. Q. The bottom one I am speaking of now?—No, I have no recollection. Q. Do you mean to say you never saw those letters?—No, I did not say anything of the kind. Q. Attend: Do you mean to say these letters were not printed at the bottom of papers and letters which you had printed in Stonyhurst?—I say they might have been. Q. Were they not?—I do not know about it. Q. What do they mean, L.D.S.?—I forget it now. Q. Did you ever know?—Most undoubtedly. Q. What?—I have no doubt I have known. Q. But surely you can recollect, if you once knew a thing you admit now you often have seen before, surely you can tell me now what L.D.S. means?—When did I admit that? Q. You said it was very common at Stonyhurst?—You said that. Q. And you agreed to it?—No. Q. What do you say—was it not very commonly printed on the papers at Stonyhurst? What is your recollection on the subject?—Well, I do not recollect the L.D.S. Q. But you did not recollect this either?—No, I did not. Q. What is your recollection about this?—I have no recollection about it. Q. Does it not mean Laus



Deo Semper? What does that mean in Latin? or is that Latin, French, or what?" Here again we have two words like the Spanish. Dios is God in Spanish, and siempre is the Spanish for "always;" so that "Deo semper" would be simple enough; but the Spanish word for "laus" is not sufficiently near. "Laude"—pronounced la-ude—which is the corresponding word, is not sufficiently near to "laus," to give at once the meaning of the word; so the defendant makes a bold dash. "Laus Deo semper—what does that mean in Latin? or is that Latin, French, or what?—Well, it would be the 'laws of God for ever.' The SOLICITOR-GENERAL: 'The laws of God for ever,' just so?—Or permanently. LORD CHIEF JUSTICE BOVILL: You have added something?—They have really nothing to laugh at." Well, the answer converts that which should be "Praise to God for ever," into "The laws of God for ever." You will judge for yourselves whether that is a mistake which Roger would have made. That concluded the subject of the inquiry as to the studies, as to the knowledge and recollection of the studies of the defendant which took place at Stonyhurst, I cannot help thinking a very fair and legitimate test to apply, to see whether there remained in his mind any of the traces of the learning which Roger had gone through. If the test attempted to be applied had been such as the counsel for the defendant seemed to imply in the cross-examination to which he subjected the Stonyhurst witnesses, I should have agreed that it would have been a most unfair and improper test. If the defendant had had 'The Commentaries of Cæsar' put into his hand, and had been asked to construe a passage in the first book of Cæsar, not having opened the book for years, it would have been a very unfair test; if he had had the Greek Testament produced to him and been asked to translate a passage, or even to read a word, I should have said, where you have a man who has never opened a book in Latin or Greek since he left Stonyhurst, you cannot expect him now to show any proficiency in those matters. It was not a fair test even to the witnesses whom the learned counsel mercilessly exposed, in all the conscious superiority of the great learning which we know he possesses. It was not a fair thing, much less a generous thing, towards those witnesses, to expose their want of knowledge, in the presence of the court, in the matters as to which they had been instructed at Stonyhurst. There is no analogy between the cases; it is not the criterion. Of those who learn Latin and Greek at school, I fear the greater number, when they leave, neglect those languages in the business and pursuits which form the principal occupation of their life. The more the pity, I think; as all will agree with me who know what literature is as a relaxation and source of refreshment to the mind, and how, when you are worn with toil, you find renewed life and vigour in turning to the works of great

authors. No one who knew what a source of delight and satisfaction it is to turn to the glorious works of the human intellect, in whatever language they may be found, would ever neglect to keep alive whatever of learning the mind had once acquired and been imbued with. But we know that in the active pursuits of life those things are lost sight of, and it would be a most unfair test to apply. But that test was not applied to the defendant. He was simply asked whether he knew the difference between Latin and Greek: whether he knew—not how to solve problems in Euclid or mathematics, but whether he knew of what mathematics consisted; not whether he understood the science of chemistry or the different laws which govern the physical world—nothing of the kind—he was simply asked: “Did you study, or did you attend lectures on this or that science? and do you know what it means?” The questions were elementary and quite simple; and what you have to ask yourselves is whether you believe that the man, whose mind had once been imbued with even the faintest traces, the most elementary traces of learning and science, such as were taught at Stonyhurst, however imperfect that teaching may have been, would have so entirely forgotten the whole as that no traces would be left behind, but all would be wiped out as if it had never existed? That is what you must ask yourselves, and solve for yourselves, with reference to this part of the defendant’s examination.

I pass on to the recollection of the defendant as to his contemporaries at Stonyhurst. One asks oneself, what do you remember of those with whom, at school or in college, you were in the same class, or of the same period? Have they all vanished from your recollection? or are you able to recollect some of them? Do some of them still live in your memory? The inquiry on the examination of the defendant was directed to that matter. Now, in the course of the evidence which has been brought before us, we find mention made of a good many persons who were philosophers at the same time with Tichborne. There was, in the first place, the Viscount de Brimont, his connection. There were the three Berkeleys, one of whom, John, died in the next room to Roger; there were the two Knights; there was La Fontaine, a negro; there was Mapother, an Irishman; Seager, with whom the defendant appears to have been in communication since his return to this country, but who I believe is now dead; Le Brasseur; the two Deases, one of whom has been called as a witness; Kennedy; the two Langtons; Ribello, probably an Italian; Plunkett, probably an Irishman; O’Doherty, Mannock, who was called before us; and Lord Bellew. Besides these Roger must have known some of the scholars, certainly the two Arundells, who were his cousins, and with whom he was accustomed while at Stonyhurst to take walks on Sunday mornings. The philosophers did not associate with the students, but on Sundays it

was a habit after mass for the philosophers who had any connections or relations amongst the students to take a walk with them. Out of the number one would suppose that Roger Tichborne would recollect some, and the defendant's knowledge was tested in that respect. In the examination before Mr. Roupell, Mr. Chapman Barber asks him, "Can you remember any particular person who was in your class?—No. Q. Can you remember the name of any of the students?—Of course I can remember the name of some students." Now there I must say I am rather surprised that he should recollect the name of students, and not recollect the name of any of his own class, the philosophers; unless, indeed, the answer implies, as it may seem to do, that he considers his own class as one of the classes of the students, which it certainly was not, but a class wholly apart from them. He says, "Of course I can remember the names of some students." Then he is asked to name them, and of course you would expect him to do so, but the answer is, "I do not remember." Then my Brother Ballantine does not like this, and says to the witness, "Remember the whole of this matter is intended to be used either for or against you hereafter; just reflect, and, if you remember people, say so; do not allow any feeling of obstinacy or annoyance to prevent you doing yourself justice. The WITNESS: (after a pause) I remember Petre and Arundell. Mr. C. BARBER: Do you mean Lord Petre?—I do not know whether it is the present Lord Petre or not. The EXAMINER: Were they in your class, or were they in the college generally?—They were in the college." Then Mr. Serjeant Ballantine interposes, and says that people are pressing on the witness, and a discussion takes place. Mr. Chapman Barber proposes to adjourn. The Examiner says: "Oh, no! The last I have is, 'I remember the names Petre and Arundell as being the names of two young men in the college.' Mr. BARBER: And you do not know whether it is the present Lord Petre and the present Lord Arundell or not?—No, I do not; I have had no opportunity of seeing them since I have been in England; I have been too busy. The EXAMINER: 'I have not had time since I have been in England to make the inquiries.' The WITNESS: That is to say, I have not been composed enough; I have had to work about my own affairs. The EXAMINER: 'I have not inquired into it,' I will say." Says the defendant, "Walmesley was the name of one of the priests; one of the priests who was there at the same time that I was, was named Walmesley." So that you see at that time Walmesley was not known to him as Rector, but only as one of the priests, and the only two names known to him as having been students at the time he was there are Petre and Arundell; of the latter of whom he speaks without any reference to the fact of his being his cousin. He is asked whether the Petre was the present Lord Petre, and he says he does



not know. Now the present Lord Petre succeeded to his title whilst Roger was still at Stonyhurst, and Lord Petre being one of the Catholic noblemen of this country, Roger being a Roman Catholic himself, would probably have been aware of Lord Petre's accession to his title, and when speaking of Petre, he would have known it was the present Lord Petre; but the unfortunate part of it is, that neither Lord Petre nor anybody whatever of the name of Petre ever was at Stonyhurst when Roger was there. As to that, we have the Stonyhurst evidence. The defendant says: "I remember Petre and Arundell"—speaking of Arundell in the singular number—"I do not know whether it is the present Lord Arundell or not." Now Roger, you know, was familiar with his two cousins, and would have known whether those two were the present Lord Arundell and Everard Arundell, who has since become a Jesuit priest. Would Roger have forgotten that there were two of them? Would Roger have said "Petre and Arundell," or "Petre and the Arundells?"—his two cousins being there all the time he was there, the older one being now Lord Arundell and the other one, Everard, having been the person to whom he gave the ultimate remainder in one half of the Doughty estates by his will, and who he knew became afterwards a Jesuit priest. In the last letter, or the last but one, which he wrote from South America, he desired that the name of Everard should be struck out of his will because he had become a Jesuit priest, thinking his directions to do that would be sufficient. Therefore he knew perfectly that there were two Arundells; but the defendant must have forgotten that, when, being asked the name of some who were at Stonyhurst with him, he gave the name of one Arundell, and said he did not know whether that was Lord Arundell or not. What makes the thing the more striking is this, that Lord Arundell was in the room at the very time when these answers were given. On the next day, being then in the hands of Mr. Serjeant Ballantine, who was examining him, he adds some names, the name of McCann and Clough and the two Coopers, as priests—not as his fellow-companions—but, singularly enough, he pronounces the name of Clough as Clo, a manner in which the Stonyhurst people tell us it never was pronounced there. The learned counsel for the defendant on this trial sought to neutralize the effect of this by asking the witnesses whether Father Clough was not called "Old Clo," as a nickname, to account for the defendant having remembered him under the name of "Clo," not Clough. However, they repudiated that, and said they had all too high a respect for Father Clough to make him the subject of any joke of that kind.

When the defendant came to be cross-examined on the subject of his contemporaries, his attention was directed by the Solicitor-General to the evidence he had given before Mr. Roupell, and he was

asked with reference to the name of Arundell, "What Arundell was this that you remember?—Everard Arundell. Q. 'Two young men named Petre and Arundell': what was Everard Arundell? Was he a student or a philosopher?—He was a student. Q. You are sure of that?—Yes. Q. You swear that Mr. Everard Arundell was a student?—Yes, I believe he was. Q. You believe? Will you swear? You must know whether he was a philosopher or not? Will you swear he was a student while you were at Stonyhurst?—He was a student. Q. Will you swear it?—I do not see what reason I have to swear it. Q. Will you swear it?—I am quite certain he was. Q. Then if you are quite certain you can swear it: will you swear that Mr. Everard Arundell was a student at Stonyhurst while you were there?—I believe he was, but I will not swear it." It is curious. I cannot understand why he should not swear it, if he knew the fact; and Roger must have known the fact. If Roger, he must have known that his two cousins, John and Everard Arundell, were at Stonyhurst with him, and that both were students while he was there, and that he walked with them regularly every Sunday morning; and I cannot understand why he should have any hesitation about it, if he had been at Stonyhurst. But this is the odd part of it: he says by Arundell he meant Everard Arundell, and yet on the former occasion, when he was asked whether by Arundell he meant Lord Arundell, he did not know; he had not had time to inquire. But Roger Tichborne would have known that Everard would not be Lord Arundell. Everard, who afterwards became a Jesuit priest, was the younger brother, as Roger knew perfectly. It was to him, as I just stated, that he had left the ultimate remainder in one half of the Doughty estates. Then he is asked with regard to Petre: "Will you swear that any person at all of the name of Petre was at Stonyhurst while you were there—Petre or Petree?—Yes, I will swear to the best of my belief there was. Q. Surely you know: you give only two fellow-collegians; you say, 'I remember the names of Petre and Arundell as of two young men in the college,' and those are the only two names you do give. Will you swear while you were at Stonyhurst there was ever a person of the name of Petre or Petree there?—Yes, I believe there was. Q. That you swear?—Yes, I remember meeting him after that. Q. Never mind after. What I am asking you is—when examined before Mr. Roupell you gave two names only, Petre and Arundell—now I ask whether you will swear there was a young man named Petre at Stonyhurst one single moment of the time you were there?—Yes, I believe there was. Q. Will you swear there was? Will you swear there was any man named Petre at Stonyhurst at any period from the beginning to the end of your time there?—It is very hard to have to swear it; my belief is that there was. Q. Will you swear? You give only two?—I think you will find that there

is more than two. *Q.* Will you swear that a man named Petre, however you pronounce it, was at Stonyhurst one moment of your time there?—I tell you — *Q.* That he was ever inside Stonyhurst while you were there?—I believe there was.” Now Sir John Lawson declares there was not, and we do not find any trace of anyone of that name.

At the period of the trial he was better informed as to the name of the contemporaries at Stonyhurst than he had been when before Mr. Roupell, and he mentions an Arundell, and Seager, and two Berkeleys, but he is unable to recollect the names of the Berkeleys. “Can you tell me the name of any other person, at all events a philosopher, who was there?—Yes, young Mr. Berkeley was there. *Q.* What was his name, do you know?—His christian name? *Q.* Yes?—No, I do not, at this distance of time. *Q.* Can you give me any other name?—Mr. Seager was there. *Q.* What was he?—He was a philosopher. *Q.* What was his name?—I believe it was Henry Seager. *Q.* Is he the man who made an affidavit for you?—Yes: at least I am not aware he ever made an affidavit. *Q.* ‘Yes, at least no; you are not aware he ever made an affidavit?’—No, I do not say he has not; all I can say is if he has I have not seen it. *Q.* Did you know that Mr. Guy had been to see him?—Yes, Mr. Guy went with me. *Q.* To see him?—To see him. *Q.* That is the man?—That is the man. *Q.* You say there were these three persons, Petre, Arundell, and Berkeley: do you remember what the name of Mr. Berkeley was?—No, I do not remember the christian name at all. *Q.* Was there more than one?—Yes, there were two of them.” Now, there were three Berkeleys. One of them was John, who died in 1847, a circumstance he would be likely to recollect. Then he is asked about a negro, a person of the name of La Fontaine or La Fontana: “Do you remember any people of colour being there?—Do you mean dark people or black? *Q.* I mean what you call people of colour: I suppose you know what that means?—No, I cannot say I can draw any line. *Q.* Not pure Europeans?—Would you call a Creole a person of colour? *Q.* Well, a Creole is a person of European parents born abroad, and who may be as white as snow; a Creole has nothing to do with colour?—They are generally very dark people; do you mean a mulatto? *Q.* I ask you whether you remember any persons at Stonyhurst, people of colour, not European?—There were dark people there, but I do not remember any negroes. *Q.* Where did they come from?—I do not know where they came from, I am sure. *Q.* Do you remember their names?—No.” There is no doubt there were two such persons there, but the defendant did not remember them.

The subject of the contemporaries being exhausted, he is asked about Humphreys. Now Humphreys was attendant on the philo-



sophers from 1846 to 1848, a period of two years of Roger Tichborne's residence there. "Was there a man of the name of Humphreys there, do you recollect?—I do not recollect. *Q.* You do not recollect Humphreys?—The name is very familiar. *Q.* It may be familiar, but was it familiar to you at Stonyhurst?—I cannot tell whether it was or not; it is very familiar to me now. *Q.* What was he? Do you remember?—I do not remember the person. *Q.* Was it at Stonyhurst, or some other time in your life, that Humphreys is familiar to you?—I think it must have been after that. *Q.* After Stonyhurst?—I think so. *Q.* Then, to the best of your recollection, there was no man called Humphreys at Stonyhurst?—There might have been. *Q.* But, to the best of your recollection, was there?—I do not remember him at the present moment. *Q.* Try if you can recollect this: do you recollect a man there whose real name was Humphreys, but who was sometimes called Arundell? Do you recollect him at all? Does that bring him back to your recollection?—No. *Q.* A servant of that name: does that remind you of him?—No, I do not remember." So that it is brought up to the closest point at which, without actually telling him, a question could be put, but he has no recollection of the name. Again, the Reverend Father Waterton was prefect of the philosophers when Roger joined. He does not remember him, though the name is recalled to him by the mention of a Mr. Waterton, the student who used to be called Long Tom. His belief is that Waterton was one of the attendants.

We have now gone through the studies and the contemporaries, and we come to another head, which affords a fair test of his recollection as to Stonyhurst, and that is the masters. I take it that where there is a succession of masters, though you may not remember all, still some of them remain in your memory. Nobody can carry back his memory to his school days without recollecting some of the masters by whom he was more immediately educated and trained. The defendant was asked on the preliminary examination, "Under whose care were you at that college?" And he says: "I am not aware that I was under anybody's particular care, as I know of. *Q.* Do you remember the names of any of the masters?—No, I do not just now. The EXAMINER: What was that?—Mr. BARBER: He says he does not remember the names of any of the masters. The WITNESS: Not just now. *Q.* I suppose there is a principal or head master at Stonyhurst?—Yes, I think there was. *Q.* Who was the principal or head master when you were there?—Well, I do not remember just now. *Q.* Did you learn Latin at Stonyhurst?—A little. *Q.* What books did you read?—I do not remember. *Q.* Not any one of the books?—No, none of them. *Q.* Who was the Latin master? Do you remember the name of the Latin master?—No, I do not remember."

On re-examination, Mr. Serjeant Ballantine says: "You have been asked questions about Stonyhurst, and I observed my friend stopped when you were giving us some of the names; you have mentioned the names of Petre, Arundell, and Turville?—No, Turville was at Paris. Mr. SERJT. BALLANTINE: Yes, you are right. Can you recollect the names of any of the other priests, or any of the pupils at Stonyhurst? Do not be in a hurry, but give yourself time?—No, I do not just at present; it was only the other day I was talking of the whole. Q. You remembered them the other day, but at the present moment you cannot?—No. Mr. SERJT. BALLANTINE: Then I will give you an opportunity of doing so to-morrow." I dare say the learned serjeant did not mean anything by that, but it was a very suggestive observation, especially if he knew that they had the list of the Fathers of Stonyhurst carefully revised—because it would suggest, you know, to a man's mind—"Between this and to-morrow, when I will repeat the question, take care to get up your lesson, so that you may know how to answer." I do not suggest that this was the purpose of the observation, but it would certainly be very likely to have that effect. I do not think it had, because I do not think the knowledge was very much greater next day than it had been before. However it was somewhat improved. Next day he is asked, "Have you carried back your recollection to the period when you were at college, since you were examined yesterday?—Yes. Q. You have carried back your memory to the days you passed at college?—Yes, and I remember some of the clergymen. Q. Are you able to mention now any more names than those you mentioned yesterday?—Yes, I think so. Q. Just mention them, and speak loud enough for us all to hear you? The EXAMINER: 'I have carried my memory back to that period when I was at college.' You say you remember the names of more fellow-collegians and of more priests than you did yesterday?—Yes, of the priests. Mr. SERJT. BALLANTINE: Just mention them?—I remember McCann. Mr. HAWKINS: With an "n" or an "m"?—Two "n's," I think; I will not be certain. The EXAMINER: Any one else?—Yes, there was. Mr. SERJT. BALLANTINE: Was he a priest?—Yes, he was; there was Clough (which he pronounces Clo); I think that is the name. Q. Was he a priest?—Yes, he was; I will not be certain of the way you spell it. Q. How did it sound?—Clo. Q. Any one else?—There were two brothers of the name of Cooper. Q. They were scholars—pupils? Mr. HAWKINS: Just ask him what they were, Mr. Serjeant Ballantine, and do not put the words into his mouth. Mr. SERJT. BALLANTINE: Then I amend my question by asking, were they scholars or priests? The EXAMINER: Were they scholars or priests?—I do not remember, but I think they were priests." Then he mentions the name of Glunderell as that of another person whom he remembered at Stonyhurst.

On cross-examination he was asked about this Glunderell: "Will you swear," says the Solicitor-General, "there was any such person at all at Stonyhurst in your time?—I will swear there was an Italian." Now it does not appear that there was any person of that name; certainly it is not an Italian name. Humphreys says there was no Italian there except a man of the name of Ribello, who was a philosopher at that time. Whether the defendant confounded the name of Ribello with Glunderell, though they certainly do not seem much alike, I do not know.

In examination-in-chief on the trial he is asked: "Do you remember the name of any of the fathers who used to act as tutors to you, and teach you any languages?—I remember the names of a few of them, not very many; it is a long while ago, and I have forgotten them. Q. Tell me what names you remember?—There was Father Sede. Q. What used he to teach?" And then, before the answer could come, it is noted, "The witness was requested to change his position." Then he says: "There was Father Mann, and there were two Fathers Cooper. Mr. GIFFARD: I think you said there were two Fathers Cooper?—Yes. Q. Do you remember any others? Father Mann, I think, you gave?—Yes. Q. And the two Coopers?—Yes. Q. And Sede. Do you remember any others?—I remember them at different times; I cannot remember them now at this moment. There was Father Walmesley, the president." So that he mentions Father Sede and Father Mann, the two Coopers, and Father Walmesley. He does not mention McCann, Etheredge, Rigby, or Bird. Then he is asked, "Can you tell me who was the superior at Stonyhurst when you went there—the head superior?" And he answers, "Father Walmesley." This certainly was incorrect. Father Walmesley was not superior till Roger's second year. Then he is asked whether there was any superior of the seminary, and he says he thinks not, and that there was only one superior. He is asked whether there was a head master of the philosophers, and he says he thinks not; he thinks there was only one superior, Father Walmesley, the rector. Then he is asked whether Father Norris was the superior of Stonyhurst when he went there, and he says no. "Q. I put the name to you, Mr. Norris; Father Norris, I suppose, he would be called. Will you swear Father Norris was not the superior of Stonyhurst when you went there?—No, he was not." Now the question as put was not an accurate question in the sense in which the Solicitor-General put it, when he asked him whether Father Norris was not the superior at Stonyhurst when he went there; for the answer to that would have been "no." But Father Norris was the superior within a month of the time when he went, and it is plain that he had no recollection of Father Norris. He is asked, "Was not Father Norris at the head of the whole institution?" and he answers,



“No, he was not. *Q.* You say Father Walmesley was the head. Did he remain the head while you were there? Was Father Walmesley there the whole time you were there?—No, he was not there the whole time I was there; there were a great many changes.” That is perfectly true; but the person who was superior when he went there was Father Barrow; Father Walmesley was not. Father Norris was made rector in the October of 1845, and continued so until the October of 1846, when Mr. Walmesley succeeded him. Then he is asked whether there was a prefect of the philosophers, an officer of whose existence we should have expected him to be aware. He is asked, “Was there a prefect of philosophers in your time?—I do not remember him under that name. *Q.* You do not recollect such a person at all? *MR. GIFFARD:* No. *THE SOLICITOR-GENERAL:* I mean such a character. *LORD CHIEF JUSTICE BOVILL:* Such an officer, or any person passing under that name?—No, I think not. *THE SOLICITOR-GENERAL:* No such person at all, is that what you swear? That there was no such person as the prefect of philosophers?—No, I will not swear. *Q.* But known by that name, like the sixth form at any other school, or a great many other names, as prefects at some schools, or monitors, and so on?—There was a superior, but still not known as a distinct superior; of course there was a superior to the masters there. *LORD CHIEF JUSTICE BOVILL:* Superior of the masters, did you say?—Yes, the head master, but not known under that title. *THE SOLICITOR-GENERAL:* That is not what I am asking you, but whether there was a person called prefect of philosophers?—I do not remember him under that name. *Q.* You do not remember any such person, any such functionary? I do not mean such an individual, but you do not remember any such character?—No, I do not.” Then he is asked about a Mr. Bird—“Did you know Mr. Bird?—Yes. *Q.* Who was he?—Mr. Bird was one of the fathers there. *Q.* What did Mr. Bird do?—Really I do not know what he was in the habit of doing. *Q.* I mean did he do anything in the school or college, or was he merely one of the fathers?—No, Mr. Bird was one of the head masters of the philosophers. *Q.* What did he teach?—I am not sure; I do not remember what he taught. *Q.* Had he anything to do with the philosophers?—Yes, he had. *Q.* What had he to do with them?—He was a kind of head man there. *Q.* A kind of head man?—I suppose you would call him superior. *Q.* He was a sort of a head man over these?—Yes, I think he was something more than the others. *Q.* What did he teach?—Well, really I don’t remember; he was not there very long. *Q.* You say you remember McCann?” Then there are some questions put about McCann. Then comes something more important. He is asked about a person of the name of Pater. “*Q.* Was there ever a person of the name of Pater?—

Pater? *Q.* Was he a boy, or a man, or a student, or what?—How do you spell it? *Q.* P-a-t-e-r.—He was not one of the fathers. *Q.* Should you be surprised to find that Mr. Bird was one of the persons whose lectures Roger Tichborne attended, and that Pater, who certainly was not a father, was the other?—Well, I am not aware that I have said anything in contradiction to that.” Pater, gentlemen, was the man who taught Roger Tichborne English and Latin. Then he is asked about Father Clough, and he declares he believes that Clough did form part of Stonyhurst when he was there, but he will not take his oath about it. He is asked whether he will swear Clough resided there during any part of the time he was there, but he will not swear to it. He says, “I will not swear to it, but I know he did.” I think he is right as to that. Father Clough did reside at Stonyhurst during that portion of the year 1845 that Roger was there; at all events up to the 17th of December. He then went away, and did not come back again until Roger had left; he then came back, and became the rector.

Being asked where he was taught, the defendant states that some of the teachers used to come and teach him in his own private room, and he mentions two especially, and these names are not immaterial. “Who came to your private room to give you lectures, at your first onset?—Father Sede, and there was a gentleman sitting in court the other day; he was there. *Q.* Who was that?—Mr. Etheredge. *Q.* Father Sede and Father Etheredge?—Yes. *Q.* They both came and gave you private lectures or private lessons—‘lectures’ is the wrong word—private lessons in your private room?—Yes. *Q.* At the cottage?—At the cottage. *Q.* Both of them?—Yes; I think to the best of my recollection, both of them. *Q.* Surely you can remember whether both those gentlemen came and taught you privately, cannot you?—I have told you so already. *Q.* But are you sure?—I am quite certain, positive, about Father Sede, and I believe Father Etheredge. *Q.* What did Father Etheredge teach you?—The rudiments of the English language. *Q.* The rudiments of what? the rudiments of the English language?—Say the English language. *Q.* I only want to repeat to you accurately: You say the rudiments of the English language?—I do. *Q.* What else besides the rudiments of the English language did he teach, or, as you say, we will say the English language?—At that time, do you mean, or later? *Q.* To begin with, in your first year?—There was spelling and grammar. *Q.* English spelling and English grammar?—Yes. *Q.* What else?—There was arithmetic. *Q.* What sort of arithmetic had you learnt in France?—Very little, indeed. *Q.* But according to what system had you learnt it?—In fact, I had hardly learnt any at all. *Q.* May I take it up to the time you went to Stonyhurst, you scarcely knew any arithmetic at all?—Nothing more than division

and subtraction, and so on. *Q.* Division and subtraction, and so on? —Yes; Just the simple sums. *Q.* But according to what system had you learnt?—I am not aware there are two systems of learning it. *Q.* Is it your notion that French arithmetic and English are the same?—Very much the same. *Q.* You made no distinction—you found no difference between the Stonyhurst arithmetic and what you had learnt before?—Yes, I found a great difference. *Q.* Did you say so?—No, I did not; you said so. *Q.* I mean as to system. They taught the same sort of arithmetic at Stonyhurst, did they, as you learnt in France?—Yes.”

Gentlemen, you recollect the argument of the learned counsel for the defendant, that because some of the sums in that Reardon book appeared to be done by the defendant upon the French system, that identified him with Roger Tichborne who came over from France, and had learnt his first arithmetic in France. But when the defendant was asked whether he had brought any arithmetic with him from France, he says no, he had learnt little or none; and again, when he says he learnt arithmetic at Stonyhurst, he is not in any degree aware that the arithmetic at Stonyhurst was not the same as in France. We know that the system of arithmetic taught at Stonyhurst was the English system. Therefore as the defendant says he learnt arithmetic at Stonyhurst, and not in France, one is at a loss to see how the French arithmetic of Roger, which the defendant says he never learned, and which at all events would have been superseded by the Stonyhurst arithmetic, can be made available to prove that because the defendant worked out a sum by a system which, as one of you pointed out, would be the Spanish system as well as the French, you can draw the inference that the defendant's identity is made out.

He is asked, “Can you tell me the name of any of those persons who did teach you anything? Do you remember the name of any other person, besides Father Sede and Father Etheredge, when you were a philosopher? You could only give me the names of Father Sede and Father Etheredge. Upon consideration, do you recollect the name of any other person, besides Father Sede and Father Etheredge, who have taught you anything?—Yes. *Q.* Who?—Different ones. *Q.* Who?—Father Rigby. *Q.* Rigby is the name, is it?—Yes. *Q.* What did he teach you?—I really do not remember what class. *Q.* What did you say?—I did not answer you. *Q.* I beg your pardon?—I do not recollect what branch it was at all. *Q.* He taught you something, did he?—Yes. *Q.* What is it your impression that Father Rigby taught you? Can you recollect?—No, I cannot recollect. *Q.* Upon your oath, did Father Sede ever teach you a single syllable of a single thing?—Yes. *Q.* Was not Father Sede, the whole time you were at Stonyhurst, professor of



Greek?—I think not the whole time.” This was a mistake; Father Sede did not become professor of Greek until some time afterwards. We have the college papers here. “*Q.* Will you swear?—I will not be certain. I will not swear. *Q.* Do you mean to swear that he ever taught you a single syllable of a single thing?—Yes. *Q.* What will you swear he taught you?—I will swear he has taught me something. *Q.* What?—I do not remember what. *Q.* What will you pledge your oath Father Sede ever taught you in his life—one word or one syllable?—I really do not recollect what it was. *Q.* Surely you can tell me one single thing Father Sede taught you; he is one of the two people whose names you have given me. What single subject, or what single fragment of one single subject, will you swear Father Sede ever taught you?—I will swear that he did teach me, but I do not remember what it was. *Q.* You will swear he did teach you?—Yes. *Q.* But you do not remember what it was?—No. *Q.* Do you remember him? What sort of a man was Father Sede?—He was a light man. *Q.* Tall or short? Should you know him if you saw him?—I cannot say at this distance of years. *Q.* Was he an oldish man then—a middle-aged man? When you left in 1849 was he a middle-aged man?—He was not very old. *Q.* Younger or older than you?—Older than me. *Q.* A good bit; ten or fifteen years?—I think so. *Q.* I must ask you again. Give me, if you can, any fragment of knowledge on any subject that you can swear Father Sede ever taught you?—I tell you I cannot say what it was he taught me. I positively swear he did, because if you put him in the box he will say the same. *Q.* Will you swear he ever taught you anything?—Yes, I will. *Q.* That you will swear? You are not afraid to do that. Was it language or chemistry, or physiology, or mathematics, or Latin, or Greek, you cannot tell?—I do not remember.”

Now what say the Stonyhurst witnesses? We have first the Reverend Maurice Mann, who was professor of Latin and Greek, who speaks as to the fact of Roger Tichborne having been taught Latin. He says he found Roger could not speak English enough, and he (Father Mann) could not speak French enough, to make English the medium of teaching him Latin, but Pater, who taught English, was also a Latin scholar, and so Father Mann handed him over to Pater to be taught Latin, and Pater remained the teacher of Roger in both English and Latin during the time he was at Stonyhurst. But the defendant has no recollection of Pater, or of having been taught anything by him.

The Reverend Mr. Bird next says that Roger attended a course of lectures on chemistry which he, Mr. Bird, gave, and he remembers him perfectly on two or three occasions personally in the room, and so far as he was aware the number of his hearers was always full, and

he has no reason to believe that Roger did not attend the full course of lectures.

Father Etheredge having been mentioned by the defendant as a person who taught him, he is asked, "Did you ever at all teach Roger Tichborne, or give him lessons at all?—No, I did not give him any lessons. Mr. JUSTICE LUSH: You never gave Roger any lessons?—I suppose you mean lessons in the way of education. Mr. SERJT. PARRY: Yes, I do?—I had to give religious instruction to the philosophers, and he attended. Q. That was on a Sunday?—Yes, you do not mean that? Q. No, I mean the ordinary lessons to a student for educational purposes?—I gave him none." This witness was at Stonyhurst from October, 1845, to August, 1846, till which time his teaching was confined to the department of logic and moral philosophy; and it is certainly very unlikely that Roger should have become a student in these subjects before he had learned English, of which he had not a sufficient knowledge to be taught Latin through it. "Q. You were there until August, 1846; did you then leave for a time?—I left for twelve months—that is, I returned to the seminary in October, 1847, and was there until August, 1848. Q. From October, 1847, down to August, 1848, was Roger Tichborne there?—Yes, he was there." Then he is asked, "Did you, with Father Sede, or alone, ever go to a cottage in which Roger Tichborne lived to give lessons?—I did not." Father Rigby, by whom, as you have just heard, the defendant said he had been taught something, he could not say what, and who was superior of the seminary, is asked, "Did you ever teach Roger anything? Was he ever taught by you anything?—No, nothing." Then there is Father Sede who is the person who, the defendant says, taught him English. Father Sede has not been called, but Father Etheredge is asked, "Was Father Sede at the college at the time you were there?—You mean with regard to those two years in which I was at the seminary? Q. I mean with regard to the time of which you have spoken, from October, 1845, to August, 1846, and October, 1847, to August, 1848, do you remember whether he was there or not?—I think that he left, but I am not quite sure. Q. Before you came?—About the time I went to the seminary, I am not quite sure. Q. That was in October, 1845?—Yes." When I look at the college books, I find no trace of Father Sede in them or in the lists of officers as teaching anything until the year 1848, when he was appointed prefect of studies, after which, in 1848–49 he became professor of Greek. So that Father Sede came, according to that account, only in time to be appointed for the 1848–49 list, at which time Roger Tichborne had left. Later on he appears to have been prefect of philosophers. I do not see how, under those circumstances, he could have taught Roger.

It therefore stands thus: Of those who actually did teach Roger

Tichborne—Father Pater taught him English and Latin. He was unknown to the defendant. Father Mann taught Roger mathematics, and examined him in Euclid. He was unknown to the defendant. Father Bird gave lectures on chemistry, which Roger attended, and he was unknown to him. Fathers Sede, Rigby, and Etheredge are stated by him as having given him instructions. Etheredge and Rigby are called, and they deny ever having taught him anything; and it appears next to impossible that Father Sede ever could have done so.

With regard to the superiors, the only one he recollected was Father Walmesley. Now, there were four rectors in Roger's time—Father Barrow, who was there when he first went; secondly, Father Norris, who was appointed for 1845–46; thirdly, in 1846–47, came Father Walmesley; fourthly came Father Brownhill, for 1847–48. Of three out of the four the defendant has no knowledge. Of any superior or prefect of philosophers he has no knowledge; but it appears from the college books, that there was a prefect of philosophers regularly appointed. Then there were officers expressly appointed for the seminary; I do not know that it is necessary to name them. It is quite clear there was a superior of the seminary, but that officer seems not to have been known to the defendant.

Gentlemen, the next subject connected with school life or college life of which you would expect a man to have some remembrance in after years is that which always interests the school-boy or student, namely, the time of vacation. We know from the evidence of the Stonyhurst people when the vacations at Stonyhurst were. There was one long vacation which commenced for the philosophers on the 1st of August and terminated on the 1st of October. For the students it began on the first Tuesday, I think it was, or some early day in August, and lasted six weeks. There were two other vacations, but which would not be called vacations in the ordinary sense of the term, because the pupils did not leave the place. They had vacations in the institution itself, that is to say, there were no studies, and they amused themselves by getting up plays and things of that sort.

Now upon this subject the defendant was questioned on cross-examination, and he was asked how many vacations there were. He says, "There were three vacations, I think, if I remember right. Q. What were they called, or what were they? I do not ask you for the particular name; when were they?—I think one was about March. Q. The second?—The second was at Midsummer. Q. And the third?—The third was towards the latter end of the year. Q. The first was about March, you think; the second about Midsummer." "At Midsummer?" interposes Serjt. Ballantine, not anticipating what was to follow. Then a question is put whether there was any distinction between the philosophers and the students; whether the



students had vacations at all; and upon that his information seems to have been defective, but as he was a philosopher perhaps you must not attach too much importance to that. But, with regard to the vacations of the philosophers, you would have expected some knowledge to be exhibited. He is asked on cross-examination: "How long did the philosophers' vacations last?—I think generally about six weeks. Q. Take the middle one, the one that began at Midsummer, how long did it last? First, when did it begin? This is the vacation you kept yourself, therefore I should think very likely you would be able to tell me when it began—the philosophers' Midsummer vacation?—Somewhere about June or July, I think. Q. Was it April, May, August or September? Do you mean to say you have really forgotten what time the Midsummer holidays began; is that really your evidence, that you cannot tell the jury what time your Midsummer holidays began—your own, I am not asking about any others?—They began at Midsummer. Q. Do you mean it was at or about Midsummer Day, which is the 24th of June; I do not say the very day, but was it at or about Midsummer Day?—Yes, it was. Q. That is a definite point, do you remember?—I remember it was about that time. Q. About that time may mean six weeks or two months either side of it; may I take it that it was within a week or a fortnight of that time?—I will not confine myself to dates at all. Q. Can you not tell the jury with something like precision when your own Midsummer holidays began when you were at school, the whole time you were at school?—I tell you I believe at Midsummer. Q. May I take it it was at or about Midsummer, within a fortnight each way, that is a month, you know? I give you a month; may I take it that it was within a fortnight before or after Midsummer?—Yes."

Thus we have the summer vacation fixed at Midsummer, or at all events within a fortnight of it. Now, if you were to take schools in general as regards the summer holidays, they do generally begin at Midsummer. At private schools that is generally the case: at the great public schools the vacations take place from the end of July to the beginning or middle of September. Eton, and those which follow the example of that school, observe that time, and schools which are preparatory to Eton do the same. But generally speaking the summer holidays are at Midsummer. Accordingly, when the recollection of the defendant is tested as to this question of the holidays, he fixes the summer holidays at Midsummer, or about Midsummer. But the Solicitor-General goes at him again and presses him still further about the time, till the defendant, who, of course, must have seen, from the pressure sought to be put upon him, that he had got wrong in some way or other, at last says—"I do not recollect what month it was, but I think it was later on, now I come

to think of it. The SOLICITOR-GENERAL: Now, you say, you think it was later on: what do you mean by 'later on'?—My answer to your question is, that I do not recollect. Q. Then I am to take it that you really mean to tell the jury that you do not recollect when your summer holidays began when you were at school?—No, not the exact time. Q. That is what you say? LORD CHIEF JUSTICE BOVILL: 'Not the exact time.' The SOLICITOR-GENERAL: I do not ask you the exact time; I am not so unreasonable; I give you a fortnight on one side, and a fortnight on the other. I will give you a whole month. Can you tell me within a month when your summer holidays began? Do not say 'the exact time;' do not put that on me; I do not ask it; I give you a month?—I think it was April, August and December." So that now he is set right so far as the summer vacation is concerned. "Q. Now, those are three fresh ones, April, August and December?—And December. Q. Then there was not a Midsummer one at all?—Well, the August would be considered a Midsummer one. Q. Then you tell me it began in August; is that your recollection?—I think to a month, according to my recollection. I think, to the best of my recollection, those were the months. Q. April, August and December; that is your recollection, is it?—Yes. Q. Do not let me withdraw again. May I take it it was the beginning or the end of August?—I think it was the beginning of August. Q. You think so; are you sure?—No, I am not positive of it? Q. Are you no more positive about August than you were about Midsummer? Have you any distinct recollection at all?—No, I have no distinct recollection. Q. What made you say just now it was about Midsummer?—Because I answered the question. Q. What made you say now it was about August?—Because I have tried to remember when it was. Q. Because there is a considerable difference?—Yes, I know there is. Q. What reason have you now for saying it was about August?—The reason? I do not understand what you mean by a reason. Q. Have you anything which brings August to your recollection rather than the end of June or the beginning of July?—No, I have not. Q. You have no more confidence in the one month than in the other. Is that so?—I have no distinct recollection." Now the having no distinct recollection is not satisfactory, because one would think this was a thing that could not very well be forgotten; the more so as regards Roger Tichborne, because we know he spent his summer vacation partly at Tichborne, partly at Knoyle, and his favourite amusement during the vacation was shooting. Now a vacation that begins in June and lasts for two months, July and August, would not carry you into the shooting season; that was a point therefore on which I should have thought Roger Tichborne would not make a mistake, but would have remembered, not only from his going away for his

holidays in August, about the 1st of August, and finally leaving the place on the 1st of August, the school year finishing at that date, but from the circumstance of his shooting during the time. He is then asked as to the duration of the vacation. "When did the vacation end—your vacation? It is rather difficult to ask you this question, because you say you are no more certain about June or July than you are about August, but take it whichever way you like: how long did it last? How many weeks or months did it last? How many weeks did it last?—I think about six weeks"—We know it lasted two months—"Q. I must ask you is that your recollection? Are you sure that it lasted six weeks, whenever it began? I give up the beginning as a bad job; did your holidays last about six weeks?"—now comes this strange answer—"I know it was six weeks in the winter." There being no winter vacation except in college and a few days spent in visits, the six weeks' vacation in the winter is purely imaginary. "Q. You know it was six weeks in the winter, which is just what I am not asking you. For clearness' sake I am keeping you to the one thing you are talking to me about. I ask you how long did the vacation last—how many weeks was the vacation, which began, you cannot tell me whether in June or August? How long did it last?—I think three weeks then." So that he puts it at six weeks in the winter and three weeks in the summer—the summer vacation lasting two months from the 1st of August, and the winter vacation, instead of being six weeks, being only, as Sir John Lawson told us, a ten days' vacation, during which they stayed at the place, unless any of the philosophers went away on a visit. Says the Solicitor-General—"I want you, if you can, to fix with certainty and on oath some one solitary fact about your Stonyhurst life. Will you swear that your Christmas holidays were about six weeks long?—Yes, I believe I can swear it. Q. Will you?—Yes, I will swear it. Q. You will swear that your Christmas holidays were about six weeks long?—About six weeks." Then comes an inquiry as to the Easter holidays. I do not know that very much turns on this. There is a cross-examination as to whether he spent Good Friday at the college or not, and it ends with his asserting his belief that he did pass Good Friday at the college, but refusing to swear to it. Then the Solicitor-General winds up in the accustomed way: "Would it surprise you to find that the vacation, the summer vacation of the philosophers, was more than two months, that the vacation at Christmas was a week, and at Easter a week, and that the students never went away at all, except in the summer? Eh?—No, it does not surprise me at all, because I do not believe it is true. Q. Is it false?—My impression is it is false. Q. Will you swear it is false? Will you swear what I put to you is not true?—No, I shall not. You have it on record; I speak from memory alone. Q. And if that is true you had forgotten all about it, had you?—I do not believe it is true."



Then the Solicitor-General goes on—"But suppose it is, you had forgotten?—I am quite certain I never returned in a week at Christmas time. Q. That is your recollection?—Yes. Q. Then, if what I put to you is true, you have forgotten it?—Most undoubtedly: what I say is, I am quite certain I never returned in a week. Q. That may be. What I ask you is, do you mean to say the August vacation was not more than two months long—you said three weeks?" The Solicitor-General would not be satisfied until, as it seems, the witness gets the thing right, and is enabled to change his statement. I do not know whether that was his policy. Upon further pressure the witness alters his statement, and says—"It is quite evident I had mistaken the winter months for the summer. Q. Quite evident what? 'Mistaken the winter months for the summer;' mistaken Christmas for Midsummer?—Yes, as regards the length of the vacation. Q. You would not be surprised to find that true, then?—You have it on record. Q. Never mind what I have on record; my record may be untrue; but your memory may be right. Would you be surprised to find it?—No, I should not. Q. Had you forgotten?—If what you say is true, I had forgotten it." It therefore stands that, on the subject of these vacations, the defendant's mind was in a strange state of confusion, and his statements are inconsistent and contradictory. He at first thought the summer vacation was at Midsummer instead of August. From the cross-examination of the Solicitor-General he saw his mistake; then he made the long vacation take place in winter instead of summer, until there again he sees his mistake from the questions, and again sets himself right; and, lastly, he apparently falls into the mistake of thinking the Christmas and Easter vacations were vacations at all, in the sense of the students leaving the establishment, instead of enjoying a short period of recreation at the institution itself. There is also a mistake of comparatively minor importance with regard to the school holidays; it appears Tuesday was a half-holiday, and Thursday a whole holiday at Stonyhurst. The defendant puts it on Wednesday and Saturday, which are the more ordinary days in schools in general; but as to that, after a good many years, a man might forget it.

Then there are one or two particular events which happened during the time Roger Tichborne was at college, on which the defendant's memory was also tested. The first is the smoking. Roger was, as we know, very much addicted to smoking. The defendant is asked about it, and he says he did smoke a great deal. "Q. Where?—When did I smoke? Q. Where?—Do you mean where I did smoke? Yes?—Whenever I got the opportunity. Q. I asked you where you used to smoke—anywhere where you could get an opportunity? Was it forbidden? was it against rules, or did they let you smoke?—They let us smoke. LORD CHIEF JUSTICE BOVILL:

Was it permitted?—Yes. The SOLICITOR-GENERAL: Smoking was allowed at Stonyhurst?—Smoking was allowed. Q. Do you really mean that?—Yes, I mean that. Q. To any extent did you used to smoke?—In the grounds. Q. What I want to know is, whether there were high hedges, or were they short or clipped? what do you say?—There were hedges at the back of the grounds. Q. I want to know whether they were high hedges or low, clipped hedges?—I should think that depended on the time of the year? Q. You cannot tell me whether the hedges at Stonyhurst were high or low?—They were usually kept high. Q. Now, really you say smoking was allowed; did you ever smoke behind the hedges?—Yes, frequently. Q. What happened to the hedges, do you remember?—No; I cannot remember anything happening. Q. You cannot tell me?—Smoking was allowed. Q. Were not the hedges cut down quite low, so that you should not smoke behind them?—Not to my remembrance. Q. That you swear?—That I swear. Q. In consequence of your being found smoking behind the hedges at Stonyhurst, were not the hedges at Stonyhurst cut down short?—I think not. Q. Will you swear?—It is a hard thing for me to swear. Q. Were they cut down short because you smoked behind them—you and others?—I should think not; no.” Then there is a question put to him as to building a cabin in the wood at Stonyhurst for the purpose of smoking. “Do you recollect anything happening in a wood at Stonyhurst?—A wood at Stonyhurst? Q. Yes, a wood at Stonyhurst, connected with smoking?—No, I do not. Q. Nothing at all? Did you do anything in a wood, you and others, about smoking?—I do not remember doing anything in particular. Q. You do not remember what?—I do not remember doing anything in particular. Q. You do not remember anything particularly?—Yes. Q. Did you do anything generally in a wood about smoking?—I am not asking about anything else—Did you do anything in a wood at Stonyhurst? Surely, you will not swear the hedges were not cut down to prevent you being sheltered behind them when you smoked. Did you do anything in a wood about smoking, you and others?—Not that I remember. Q. Did not Roger Charles Tichborne and others build a little cabin with their own hands in a thick wood near Stonyhurst for the purpose of going and smoking there? If it is true, you cannot have forgotten it; is it true that you did?—You do not mean a wood at Clitheroc. Q. I mean a wood at Stonyhurst?—I do not remember that such was the case. Q. Did you ever build a cabin in any wood to go and smoke?—Not a cabin. Q. Anything? a house, or a shed in a wood, to go and smoke?—I do not remember doing it there. Q. I asked you whether you and others did not build a cabin, the hedges being cut down so that you could not smoke behind them, whether you did not go, with others, and build a cabin in a wood at Stonyhurst, and

whether Father Rigby did not find it out, and pull it down? Either Father Brownhill or Father Rigby?—It might have been the case. *Q.* Of course, it might have been, but was it?—I do not remember. *Q.* You do not remember?—No, I do not. *Q.* Did you not one day light a fire in the cabin, and did not the smoke go up, and was not it seen from Stonyhurst, and did it not bring down those gentlemen on you, who found you smoking, and they had the cabin pulled down. Is it true or not, or have you forgotten that it is true? Is it true or not?—You mean if I was there at the time: you say so, but I do not believe it is true. *Q.* Did the thing happen?—It might, and it might certainly not. *Q.* Did the thing happen?—I do not think it did. *Q.* Will you swear it did not?—I will not swear it did not happen. *Q.* Had you forgotten it?—I do not even remember it now.” With regard to these circumstances—the smoking behind the hedges, their being cut down, and the smoking in the cabin they built for the purpose, and the cabin being pulled down, and, lastly, the old flue being made use of to smoke in, and that being discovered too—they are all spoken to by Humphreys. The hedges were large hedges, one of them a very fine beech hedge, behind which these lads, with Roger at their head, used to smoke. Smoking was not allowed. It was found they were smoking to excess, and attempts were made to put it down; so these lads went behind the hedges to smoke there, and the Fathers had to cut them down to prevent their smoking. Sir John Lawson tells us this; Humphreys also says they built a small cabin in the plantation, about eighty yards from the seminary, where it was concealed by the trees; there they smoked for a few weeks, until Father Rigby, the superior, found it out, and ordered it to be taken down, and it was taken down. Then they had recourse to the flue, a large place which the ivy had grown over; and they used to get into the flue, and smoke. Father Brownhill, who was at that time at the head of the seminary, discovered that, and put a stop to it. The defendant appears not to have known that; but the evidence is positive that it happened.

The death of John Berkeley was an event which no doubt must have created a great deal of sensation at the time. He was one of the philosophers, very popular, very much liked. An abscess formed itself in his side, he neglected it, attended to it himself; at last it got very bad. Medical advice was called in; but it was too late; the abscess struck inward, and he died. The sudden death of this young man produced, according to the evidence we have had before us, a very painful feeling. During his short illness his brother students were all hanging about his room to know how he was going on, to see him, and attend on him. He died. This was in January, 1847. After his death there was performed at the church of the institution that most impressive rite—the most impressive of all the



rites of the Roman Catholic Church—a solemn requiem for the dead, which everybody, old and young, high and low, connected with Stonyhurst, attended. After that the father took the body away to be buried in the family vault. All this produced much sensation. Roger Tichborne lodged in the next room to this young man, and, like the rest of his companions, was seen in and out of this room, anxious about the health of his friend. I do not know that he was a greater friend of Roger Tichborne than the rest of them; but these young men, thirteen or fourteen in number, lived entirely together, and this was a circumstance of course calculated to create a powerful impression. The defendant is asked about it: “Do you remember any one of your friends dying at Stonyhurst?—One of the fathers died there. *Q.* Who was that?—I forget what his name was. I think there were two of the fathers died while I was there. *Q.* I am not speaking of the fathers; I am speaking of your friends, with whom you were living; young gentlemen of your own age. Do you recollect any of them dying?—I have some remembrance of somebody dying, but I cannot state who. *Q.* I have asked you whether you remember anybody dying?—I do not remember. *Q.* I want to know if you can tell me who it was. Was there anybody died?—I believe there was somebody died. *Q.* Who was it?—I do not remember who it was; do you mean a father or a pupil? I think there were either two or three of the fathers died while I was there. *Q.* Did any of the pupils die?—I think there was one died in 1847. *Q.* One of them died in 1847?—I think so. *Q.* Just tell me who it was, if there was one died?—I do not remember his name. *Q.* Was he a friend of yours who died?—No, I think not; no more than a college acquaintance. *Q.* Not a friend—not an intimate friend?—He might have been a friend. *Q.* Was he an intimate friend? If he was you would remember his dying, I think?—Not one I knew before I went there. *Q.* That may be. Between 1845 and 1847, when you say he died, had he become an intimate college friend?—I do not remember whether he was or not. *Q.* I do not want to press you. Cannot you remember that?—No, I do not remember his name. *Q.* What was he? How old was he? Was he a student?—No, he was one of the philosophers. *Q.* Now, you can surely tell me who he was?—No. *Q.* Can you tell me or not?—No, I cannot remember. *Q.* Are you sure he did die? or are you not certain about that at all?—Yes, he did die, I believe. *Q.* Are you sure of that?—Yes, I am certain there was one of them died, but I cannot tell who.” Now the circumstance was one calculated to leave a strong impression. The defendant does know that one of the philosophers died, and he knows it was in the year 1847, which was the year in which the death of John Berkeley took place. But he knows nothing of the name. There were three Berkeleys

there with Roger, and one died during the time he was there in the room next to his own. Humphreys is asked, "Do you remember who was next to him in that gallery?—Mr. Seager and Mr. John Berkeley, who died. They were on either side of him."—That is the Mr. Seager with whom the defendant has since been in communication though he says he did not make an affidavit for him. It is not impossible Mr. Seager may have referred to this death of their brother student. *Q.* What room did Mr. John Berkeley live in?—He occupied No. 4. *Q.* Was Mr. John Berkeley well known to all his fellow-students?—Very; a very popular young man. *Q.* Do you remember his death?—Very well. *Q.* Will you give me about the date of it?—It was the beginning of January in the year 1847. *Q.* Was his death a sudden death, or was it expected?—Very sudden. *Q.* Did it create a sensation in the college?—A great deal. *Q.* You remember that well?—I have never forgotten it. *Q.* Do you know whether his fellow-students used to attend upon him during his last illness?—Very much. *Q.* Do you remember whether Mr. Roger Tichborne used to go to his room either to sit with him or attend him?—I have seen him there."

Then the last event out of the ordinary course of college life is the fact of Roger acting and taking a part in the play of the 'Castle of Andalusia.' The defendant is shown O'Keeffe's play of the 'Castle of Andalusia,' and asked whether he ever took a part in that piece. He answers: "I do not think I ever took a part in this piece. *Q.* Just consider; did you ever take a part in that?—I think not. *Q.* Surely you can recollect whether you ever took a part in the 'Castle of Andalusia,' a comic opera, by John O'Keeffe, in three acts?—I do not think I ever did take a part. *Q.* Will you swear you never did?—I might safely swear it, I think. **LORD CHIEF JUSTICE BOVILL:** I do not know what you said?—I do not think I ever have. **THE SOLICITOR-GENERAL:** Will you swear? You would hardly forget the 'Castle of Andalusia,' with a lot of music that people know very well. You are a musical man, and know that Shield wrote the music to it. I dare say you have heard the songs when in the Carabineers—'The Wolf'?—Perhaps you will allow me to answer for myself; I object to your saying what I have done. *Q.* You can surely recollect whether you acted in the 'Castle of Andalusia'?—No, I said I did not think I ever did. *Q.* Will you swear you never did?—No, I will not swear, but I do not think I have. *Q.* Surely you will swear whether you acted in the 'Castle of Andalusia'?—It seems to be your impression that I cannot forget anything. *Q.* Never mind: I ask you whether you will swear one way or the other, whether you did act in the 'Castle of Andalusia'—take a part in it?—No, I do not think I have done so. *Q.* Will you swear you never did act a part in the 'Castle of Andalusia'?—

I do not think I did. Q. Is it a thing you could have forgotten now, taking a part in the 'Castle of Andalusia'?—Just allow me to see the book again. Q. Certainly. (It was handed to him)—No, I do not remember taking a part in it. Q. I will put another piece to you. Did you ever hear of a farce in two acts, 'No Dinner—But However'—or read it?—No, I have no recollection of it. Q. Did you ever take a part in 'No Dinner—But however'?" He answers fairly enough—"I have taken part in no dinner often enough. Q. I am glad to see your spirits are so good, but will you answer the question when you have cut your joke? Did you take part in the play of 'No dinner,—But However'?—No, in the play I do not think I did; I do not remember doing so. Q. Will you swear you did not?—No, I will not swear I did not. Q. What is your impression? Are you confident you did not?—I do not think I did. Q. Will you swear you did not?—No, I will not swear I did not." Gentlemen, we have got the play-bill of the performance in the winter of 1846. "This evening, the Gentlemen Philosophers will have the honour of performing the 'Castle of Andalusia,' a melodrama, in three acts, by J. O'Keeffe. To be followed by 'No Dinner—But However'—a farce in two acts." In the first, the part of 'Rapino' is set down to R. Tichborne. In 'No Dinner—But However'—the part of two villagers is announced as to be played by "R. Tichborne and E. Mapother," and we have no reason for supposing that Roger did not play in those two parts. Now the Solicitor-General having shown the defendant the play-bill, asks him, "Is that a Stonyhurst play-bill?—Yes, that is a Stonyhurst play-bill. Q. Does it appear that the philosophers played the 'Castle of Andalusia,' and that Mr. Roger Tichborne played 'Rapino'?—That was in 1846, and you expect me to remember it, do you?" Says the Solicitor-General, "Burton Constable, which you knew about, was in 1846?—No, it was not. Q. However you had forgotten that?—Yes. LORD CHIEF JUSTICE BOVILL: But do you remember it now?—Yes, my Lord, I have some idea of it now. The SOLICITOR-GENERAL: What sort of part is 'Rapino'? Do you recollect 'Rapino'?—I tell you I have no recollection of it." There again the question is, whether you think, however insignificant the part may have been which he had to perform (no doubt the part that he played was an insignificant one), yet having performed a part in a play or a farce, during the period of his college life, a man would forget that afterwards? Even supposing the circumstance buried in oblivion in his mind, on the play-bill being produced in which his own name figured, and the circumstances being recalled to his memory, would he not recollect it? It is plain the defendant did not recollect it. It may be that Roger may not have performed in these plays;



we have no positive proof he did. If he did, you must form your own judgment as to whether he is likely to have forgotten it or not.

I now come to the last matter relating to Stonyhurst, namely the circumstances connected with his leaving. Under what circumstances did Roger Tichborne leave Stonyhurst? I take it to be perfectly clear from the evidence, and I cannot suggest a doubt about it, that he left on the 1st of August, 1848, because there is the letter to his mother, dated on the 4th, in which he says, "I left Stonyhurst on the 1st." Did he ever return to it? It is suggested that he did, and I will tell you why. The defendant conveyed to the former jury the belief that he (speaking of himself as Roger Tichborne) left Stonyhurst prematurely, before the period was expired for which it had been intended he should remain there, by reason of his having contracted a disorder, which was considered a sufficient reason for sending him away as guilty of immoral conduct, which they would not tolerate in that institution; and it was put on the former trial, that this having been discovered, he was told that as soon as he was well enough he must leave. But the ground has been altogether shifted on the present trial. It having been made out clearly that he did go away on the 1st of August, from the letters to Vincent Gosford and to his mother, in which he states the precise day on which he left, it was quite impossible for the learned counsel on the present trial to assume the ground taken on the former one; so he shifted it and said Roger Tichborne had gone back after the 1st of August, 1848, and then had been suddenly dismissed. Let us see how the matter stands. On the cross-examination on the former trial the Solicitor-General asked him this question: "Had you any disease, any complaint, while you were there?—I decline to answer that question. Q. I am afraid I must ask you: had you any sickness?—What year are you speaking of? Q. I am speaking of the time you were at Stonyhurst?—I know that. Q. Had you any illness while you were at Stonyhurst?—What time are you speaking of? Q. Had you any illness during the time you were at Stonyhurst? Any serious illness that confined you to your bed?—Yes, I was in bed a few days. Q. What with?—I decline to answer the question. Q. A few days?—Two or three days. Q. What was the matter with you?—I was not well. Q. You were not well I know. What was the matter with you?—I decline to answer." I own I cannot solve to my own satisfaction what the Solicitor-General had in his mind, when he was pressing the defendant with these questions. It is quite clear the defendant thought they referred to some complaint like that which I alluded to just now: whether that supposition was well founded does not appear in the result. We know Roger Tichborne had an attack which might have been a serious one. I suppose it

was an attack of that spasmodic, asthmatical complaint, because I find that a medical gentleman, Mr. Purdon, whose books were produced, went over to Stonyhurst three times, and on one of those occasions bled him, but gave him no medicine. Those books were produced with a view of confirming the statement of the defendant. When we came to examine them it turned out to be no such thing. On two occasions, whatever the attacks may have been, Mr. Purdon, from Preston, the medical man who attended the college in any case the infirmarian could not deal with, came to see him. On the first occasion Mr. Purdon gave him a blue pill and a saline draught: we all know what that means—stomach out of order. On the second occasion he charges two or three journeys and a bleeding. Of course that does not point in the direction in which it was hoped the entries in this book would point. That would not do: journeys and bleeding, without any sort of medicine, was not the thing. Therefore, as far as we know, there was nothing the matter with Roger Tichborne during the time he was there. Whether the Solicitor-General had in his mind the occasion when the doctor went over and bled him, I am sure I do not know. It is quite clear the defendant had his mind turned to something else, and he and the Solicitor-General do not appear to have come to any explanation. Then it is taken up by Serjeant Ballantine on re-examination: “You have spoken of some illness that you had. I do not want to go into details: whom were you attended by for that illness?—A doctor—one of the priests. *Q.* The doctor was a priest?—Yes. *Q.* And he attended you, did he?—Yes. *Q.* Without going at all into details, was any communication made to you after that illness or about the time of that illness?—Yes, there was. *Q.* How soon after that did you leave the college?—Within a month of that time. *Q.* You left about a month afterwards?—Yes. *Q.* Had you intended to leave so soon, or was it intended that you should leave so soon?—It was not intended that I should leave so soon.” So that, you see, he connects this illness with the time of his leaving, and refers to it as the cause of his leaving; and it has no reference whatever to a supposed illness of a similar description which the learned counsel said took place on his first arrival at the college, and by which he accounted for the fact of his living so many months in the cottage. The only illness of which the defendant speaks has reference to his leaving. He says it took place a month before he left, and he received notice to leave, and did leave in consequence precipitately. Now, as I have pointed out, we know perfectly well, from his own letters, that he left at the commencement of the vacation, on the regular day, the 1st of August. We know, moreover, that it was intended he should leave on the 1st of August; for when it was proposed that a commission should be applied for, his father stipulated that he should complete his course and stay until the

August of that year, and he did so. The accounts produced before you show that his account was made up to that period. An extra month was charged for, and this at first created a little difficulty, but it was easily explained. He went one month before the college year commenced. Therefore, in addition to the 100*l.* which he would pay for the year's course, he had to pay for an extra month. But the whole account was cleared up to the 1st of August, 1848, and there is no trace of Roger Tichborne in the books afterwards. We know that when he left at this date he went to Grosvenor Street to spend a little time at Mr. Seymour's. Then he joined his father at Clifton—not his father and mother, as the defendant stated on his examination, because we know his mother was in Paris—and he stayed with his father at Meridian Place, Clifton, until September. He then went with his father to Rheims, to the Vicomte de Brimont's, until the 14th of October. There is a letter written by the father to the mother when they were coming back. Then he went with his father to Knoyle, and at Knoyle the father received a letter from the mother pressing that Roger, instead of going into the army, should return to Stonyhurst. The father wrote back to say it was out of the question; that he was too old for Stonyhurst, and would be unwilling to return; and when the young man gets a letter of the 11th of November from his mother to the same effect, he writes and tells her, in not over-dutiful language, to mind her own affairs. As to saying he went back, that is out of the question. That is the position on which the learned counsel rests his case with reference to the circumstances of Roger leaving Stonyhurst. The defendant's statement that he left Stonyhurst earlier than he otherwise would have done, because of a complaint he had contracted, falls to the ground; and the position taken by the learned counsel in substitution, that although it is true he did leave on the 1st of August, which would be the proper day for all students, philosophers or scholars, leaving the institution, he, notwithstanding that, went back intending to stay another year, but was dismissed on account of that unfortunate affair, falls to the ground, because it not only is utterly unsupported by the evidence, but is directly contradicted by the evidence. That statement is erroneous, and it is not an unimportant one; why it should have been started I do not know. Being clearly erroneous, one does not see why the defendant, if Roger Tichborne, should have asserted it. Whether anybody had told him that Roger had the misfortune to contract a complaint of this kind I do not know. Who may have prompted it, what may have been the motive for making it, I am sure I do not know and cannot suggest; all I know is that it is positively and unmistakably contradicted by the evidence. So much for Stonyhurst, with one exception; there are two witnesses for the defendant with reference



to Stonyhurst, and the statement of one of them is no doubt deserving of your attention.

I allude to the evidence of Mr. Thomas Richard Hofland, who in the year 1845-46 was the drawing-master at Stonyhurst; and he says he remembers Roger Tichborne as one of his pupils, but one who made very little progress. This gentleman had a partner of the name of Hill. They used to go over together; and while Mr. Hofland taught landscape drawing the other taught heads and figures. Mr. Hofland says, "At the instance of a friend of mine named Meyer, from whom I received a note to say the defendant was at Preston, and asking me to call upon him at the 'Royal Hotel,' I sent my name up, and I may say," he adds very properly, "that the proprietor of the hotel knew me perfectly well by name. DR. KENEALY: When you got into the room tell us what took place?—Sir Roger advanced to me and said, 'You are Mr. Hofland, the gentleman who used to come with another, once a week from Preston.' Q. Did you say anything upon that?—I said I was. He asked me if I could recognize him. I said at first that I had very great difficulty in recognizing him, as twenty-seven years had passed between our meeting before; we had greatly changed. Q. You observed that?—I observed that. I said if he would permit me I should like to test him with certain questions. He then said, 'I should not, I think, have recognized you by your features.' Q. He said that before?—He said that before, but that he remembered the loss of my limb, which was the case then—my leg. DR. KENEALY: What was the first question you put to him?—The first question I put to him was if he remembered the name of my partner. It was some time before he could remember, but eventually he did remember it. THE LORD CHIEF JUSTICE: What did he say?—Mr. C. J. Hill, of Preston. Q. Did he use the term 'Mr. C. J.'?—There I think I am mistaken. He said Mr. Hill of Preston was my partner. The next thing I asked him was if he remembered the name of a person who kept a small inn at the village of Hurst Green, a very short distance from the college grounds, and he said, 'Oh, yes, I quite remember Old Betty.' DR. KENEALY: Is that the name of the old lady?—That is the name she was familiarly known by by the pupils and the neighbourhood. We always put up our conveyance there, and I myself cannot remember her real name; I can only remember her as Old Betty. She had a husband, but was chiefly known, and I can remember her only, as Old Betty." That is rather striking. On the former trial the defendant was asked if he knew the name of Hurst Green; he did not know the name of the place at all, and it does strike one as curious that now when he is asked whether he remembers a person who resided at Hurst Green, he remembers not only that, but that she was called Old Betty. "Q. Anything else?

—I then asked him if he could remember the name of the rector at the time, and he named him—the Rev. Father Walmesley.” Now this gentleman tells us he ceased to be the drawing-master at the expiration of the collegiate year in 1846. The Rev. Father Walmesley was not rector until after that time. It shows how easily an answer may mislead a witness. He tells us distinctly he was drawing-master up to the August vacation of 1846. I have the college books here, and it was not until the October of 1846 that Father Walmesley was appointed rector. Therefore the answer must have been erroneous. The defendant only appears to remember Father Walmesley as rector. Although there were four rectors in his time, Father Walmesley is the only one who is impressed on his memory. When he is asked by the witness who was the rector, he answers “Walmesley,” and the gentleman who knew something of Father Walmesley, no doubt as one of the heads of the institution, is struck by that, and thinks the answer was right, although from the college books it is clear it was wrong. Then the witness is asked, “Did you ask him the names of the pupils in your class?—I asked him the names of the pupils in my class among the philosophers. Q. What did he say?—He mentioned Bellew, Waterton, and the Berkeleys, I think; but certainly Bellew and Waterton.” There, again, Mr. Waterton had not been known at the former trial, even by name, but he is mentioned now. “He mentioned Bellew, Waterton, and the Berkeleys, I think; but certainly Bellew and Waterton.” All these names had been put to him on the former trial. “You are quite certain about Waterton?—Yes. Q. What was the next question that you asked him?—I think that was nearly all that I did ask him. Q. Did you ask the name of any of the leading Catholic families there?—I did do that; whether he knew the names of any of the leading Catholic families in the neighbourhood. He mentioned one especially, Mr. Segur. Q. Did he mention any other name?—No. Q. Was there anything in connection with Mr. Segur you inquired?—I asked him by what Mr. Segur was particularly known, and he said by his having a fine collection of pictures.” It is to be observed that by this time there had been communications with Mr. Segur, and the defendant had been to see Mr. Segur; there was therefore nothing remarkable in his knowing thus much about him. There is a question whether they mean the same person, and then Mr. Hoffland says he could spell the name, S-e-g-u-r. There is no doubt that they are speaking of the same person. “Mr. JUSTICE MELLOR: Do you know whether a son of his, or a grandson, is a barrister on the northern circuit? Dr. KENEALY: I am going to ask him something on that. Did you ask him anything about a son of Mr. Segur?—I did. Q. What was the question you put to him?—I asked him if he knew an intimate friend of

Mr. Segur's He said he remembered one, Mr. Townley Knowles—Mr. Knowles, he said at first. I asked him if he could tell me the first name of Mr. Knowles. He told me Townley Knowles. I asked him if he knew his profession. He said he was a barrister." He is a barrister living at Preston now. " Q. Did he say anything further?—I asked him then if he knew anything of the connections of Mr. Knowles. He told me he had a brother in the army who lost a limb in one of the battles, either Aliwal or Sobraon, in 1846. Those were all the questions I put to him." If he had been in communication with Mr. Segur there would be nothing very remarkable in his having heard of these gentlemen. Now comes this: " Did he ask you a question?—He did. Q. What did he ask you? He asked me if I remembered meeting him in Preston, at a place where neither of us should have been, and his begging me not to mention that meeting at the college. Dr. KENEALY: What did you say?—I said, upon recollection, I did remember that circumstance. Q. Now, as far as you know, did any person but you and he know of that particular meeting?—I have a firm conviction that no one else could know. Q. You stayed with him about three quarters of an hour talking to him; did you observe his features at that time carefully?—I did. Q. Who do you say it is?—I could not say from personal identity; I could only say from the conviction produced upon my mind by the questions asked." Then Mr. Hawkins very properly objects, and I say, " That is for the jury, of course. Evidence as to identity of personal appearance is a different thing. The WITNESS: The general expression of the upper part of the face especially reminded me of Roger; I thought so towards the end of the conversation. The LORD CHIEF JUSTICE: 'The general expression of the upper part of the face reminded me of Roger?'—So far as I could recall him after the lapse of so many years." On cross-examination he admits that his friend Meyer took great interest in the defendant's cause, that they had often discussed it, although they had not gone into these details. " Did he tell you in 1868 that he had seen a Mr. Segur?—He did not; yes I think he did, now I remember, mention that he had seen Mr. Segur. Q. Did he tell you that he had, in April, 1868, visited Preston with a Mr. Baigent?—He did not. Q. Do you know Mr. Baigent, the drawing-master?—I do not know him at all; I have never seen him. Q. Did he tell you that Mr. Baigent thought that Mr. Segur was too timid a man?—He did not. Dr. KENEALY: My Lord, are we to have this? The LORD CHIEF JUSTICE: He is not likely to have told him that. You are entitled to ask him undoubtedly whether the defendant at the time he talked to him about Mr. Segur told him he had met Mr. Segur in 1868. Mr. HAWKINS: And whether he was in company with Mr. Baigent? The LORD CHIEF JUSTICE: Yes; but



now you are going beyond that. Mr. HAWKINS: I am speaking of as long ago as the 5th of April, 1868?—He mentioned nothing with regard to 1868 to me. Q. But he did mention to you, did he, that he had been at Preston?—He did not mention that. Q. That he had seen Mr. Segur?—I can now remember his mentioning Mr. Segur. Mr. JUSTICE LUSH: I thought you said he told you he had been in Preston; he did not say 1868?—He did not tell me he had been to Preston. The LORD CHIEF JUSTICE: But did he tell you of Mr. Segur?—I can now remember his mentioning something of Mr. Segur to me.” And so forth.

Now, gentlemen, as you have seen, there had been a very considerable amount of want of knowledge displayed upon the many points on which the knowledge of the defendant was tested with reference to Stonyhurst; as regards the circumstances of his going to Stonyhurst, as regards his residence, as regards his studies, as regards his vacations, as regards the principal incidents that happened during the time he was there: against all these numerous instances of want of knowledge we have to set two instances of knowledge: the one is, that when he sees this gentleman he remembers Hurst Green and the inn there, and that Old Betty kept it, although he knew nothing about Hurst Green on the former examination; and then there is this other recollection, which seems to be “the one green spot” on what I am afraid we must call “memory’s waste”—the recollection of the visit to Preston and the opportune rencontre with the drawing-master, as to which it is very much to be regretted that the drawing-master did not rebuke the pupil; but the drawing-master was what in law is called *in pari delicto* with the naughty boy, and all he could say was, “Roger, if you don’t tell of me I won’t tell of you.” Whether, nevertheless, Roger did say something about it to the other naughty boys—for I dare say there were others at Stonyhurst besides Roger—about this rencontre with the drawing-master—whether it was talked of amongst them as matter of amusement—and whether what the learned counsel for the defendant called the bird in the air that tells things, did tell, I cannot say; one does not know whether this fact may have been talked about, and whether so it may have got to the defendant’s knowledge. Whether Mr. Segur knew it, or Mr. Meyer knew it, whether the drawing-master let out that he had got a question by which he could test the true man or not, or how it reached the defendant, I do not know. If it did not, it is a very remarkable circumstance that in the waste of memory produced by the long lapse of time there should be that one particular circumstance, by which he was enabled to revive in the recollection of the drawing-master their common transgression, and so satisfy him that he knew that which nobody but Roger Tichborne and himself could have known, if he was the true Roger.

Then there is a young woman who came from Stonyhurst, of the name of Jane Coates. She speaks, not to any conversation or anything that passed at Stonyhurst; she only speaks to her recollection of Roger Tichborne. She was a girl at that time of thirteen years of age. She says she heard him speak sometimes; she describes him as tall and thin, and his walk as funny, and says he used to throw his legs about. She laid a wager about his foot being smaller than somebody else's, which is an odd thing for a young girl of thirteen to do, but she takes on herself to speak of his identity, and expresses her opinion that he is the man. I think that is the effect of her evidence, and that ends the case with reference to Stonyhurst. We pass on to subsequent events.

Now there is a visit which Roger Tichborne paid at this time to which importance has been attached, especially on the former trial. It seems that in the early part of the year 1848 he paid a visit to Burton Constable. The defendant on the examination-in-chief is asked, "Do you remember any particular places you went to?—Most likely to Tichborne, and I went on one occasion to Burton Constable." It is rather remarkable that when he is speaking of the places he went to in his vacations he makes no mention of Knoyle, to which place he went regularly, spending half of his vacation there. "Q. How long do you remember did you stay at Burton Constable on that occasion?—From five to six weeks, I think; the length of the vacation, whatever it was." Sir Percival Radcliffe tells us he was there a fortnight; the length of the vacation certainly was not five or six weeks. He might have had in his mind what he thought was the Christmas vacation, as he said, when pressed on the subject, that at Christmas he had a six weeks' vacation; but we know it was only a ten days' vacation, during which a philosopher might go on a short leave. He could not, therefore, have been away from Stonyhurst at this time five or six weeks. That must be a mistake. "Do you remember anything that happened while you were at Burton Constable?—Yes, I remember a great many things that happened. Q. Do you remember the private theatricals there?—I do. Q. Where were they held? what part of the house?—At the bottom of the long room or library; it was called the long room and also the library." Then he speaks about cutting down a hedge at Burton Constable at this visit. He tells us that Mr. Talbot Constable, that is the present Sir Talbot Constable, had a piece of land set apart which he considered his farm; that he was going to remove a hedge, and the defendant said, as Roger Tichborne, "You had better let me cut it down;" and then he says, "I set to work and did it. Q. What was Talbot doing while you were cutting down the hedge? Do you remember?—He was spreading manure on the land." He also speaks of the purchase of a black mare from one Lambert, a horse

dealer, which he bought for Sir Talbot Constable. “*Q.* Do you remember a man of the name of Lambert?—Yes, the horse dealer. *Q.* Tell us what happened about Lambert, the horse dealer?—Talbot asked me to go and buy a black mare that he had. *Q.* How far was his place?—Four or five miles; I do not remember exactly. *Q.* How was the black mare brought back again?—I brought her back myself. *Q.* Was there anything remarkable about the deal for the mare that you remember?—We had a few glasses of drink over the purchase. *Q.* Had the few glasses of drink any effect on either of you?—I think it had slightly on me, and more so on him. *Q.* What do you mean by ‘him’?—Lambert.” Then he speaks of going in company with one White to see some piebald horses which a foreign dealer had brought over, and discovering that one of them was painted. Then he tells the story of the butler not being forthcoming; on which occasion he fetched the decanter from the sideboard and helped himself and the guests to wine. These are things which, if true, show he must have a very good memory. They are circumstances not likely to make a deep impression on the mind. The butler not being in the room when he should have been, a young man jumps up and helps the people all round. It is not exactly the thing you would expect him to remember in afterlife, if he forgets things of greater importance. White is dead; but Sir Talbot Constable is alive, and could have been called; but he does not come forward on the present occasion. You have heard the learned counsel’s explanation of why he did not call him, and you must judge for yourselves whether this is satisfactory. But with regard to the horse said to have been bought of Lambert, Sir Percival Radcliffe, who was staying at Burton Constable at the time, says that it was he, and not the defendant, who bought the horse for Sir Talbot Constable. He says when they were in the cab together at Croydon the defendant said, “I gave Talbot Constable a black horse,” and he said, “You gave Talbot Constable a black horse? I never heard of it!” and he said, “Well, perhaps it was a brown horse.” Sir Percival continues, “The next observation I made was, ‘Where did you buy it?’ ‘Oh,’ he says, ‘I bought it of one of the farmers.’ Then I said, ‘What was the name of the farmer?’—‘His name was Lambert,’ he said. Then all of a sudden it flashed on my mind, the incident that occurred at Burton Constable. I gave a black horse to Talbot Constable, and I also bought a horse from Lambert, but the horse I gave to Talbot Constable was not the horse I bought from Lambert, but altogether a different one.” If the defendant has got hold of the wrong end of the story and made a mistake about it, that is one thing; but it is not clear that this is so, because the one is speaking about a horse and the other is speaking about a mare; and it may have been that the transaction of which the defendant is



speaking may have been a different one to that which Sir Percival Radcliffe had in his mind. At the same time it may be observed that the defendant in his examination speaks only of one horse bought of Lambert. The horse may have done service on both occasions. I do not know how that is.

The defendant was further asked about the theatricals at Burton Constable, which he says were played in a particular part of the house. "What were they? Do you happen to remember what they were?—Do you mean the name of the piece? Q. Yes?—No, I do not remember. Q. Were you a spectator or an actor?—I played one of the musical parts there, I think. Q. What did you play?—The horn. Q. The what?—The French horn. Q. But that would be the orchestra; what I want to know is, did you play in the piece or not? I do not mean at the same time as you were playing the horn; that you could not do?—No; I do not think I played in the piece. Q. Did you play in the piece?—I think not. Q. You recollect getting up and helping the wine at Burton Constable; surely you can recollect whether you played in the piece? You remember cutting the hedge; surely you can recollect whether you played in the piece or not?—I tell you I don't recollect whether I did play in the piece. Q. Will you swear you did not?—'Popping the Question,' was the name of the piece, if I recollect right. Q. Now, my question to you is whether you played in it?—No. Q. Will you swear you did not?—No, I will not swear, because I might have assisted in something or other. Q. No; I mean played a part in the piece. Surely you can recollect that?—No, I do not think I did. Q. You will not swear?—No. Q. You say there was one—'Popping the Question;' was there anything else played?—Really I do not recollect whether there was anything else or not. Q. What was played? was it French or English? Do you recollect any French being played there?—Yes; now you remind me of it; there was a French piece. Q. Perhaps you can tell me what it was?—No, I do not recollect; there was a French afterpiece. Q. I thought you would remember that the instant I put it to you. Now then you can tell me the name?—I cannot. Q. Try?—I cannot. Q. A French piece. I thought you would recollect it like lightning: now give us the name?—No, I am not quite so quick as you are. Q. It is a bad return: I led you to the French; tell us the name. You knew French, and it was not everybody in those days who did. What did you play in French, anything?—I do not recollect that I did. Q. Come, come. What did you play, a prince or a servant, or what was it?—I do not recollect what it was. Q. Was it a French piece at all?—Well, I am not certain. I believe it was a French character in an English piece. Q. Now, that is coming very close to it indeed; that is a very uncommon thing—at least,

comparatively—that I am sure you can tell me ; a French character ; what was the French character in the English piece ?—It was a French officer, I know. *Q.* A French officer ?—Yes. *Q.* Now we are getting very close to it ; quite warm, as they used to say in the game ; what was it ?—I do not know the name. *Q.* A French officer in an English piece ; a little more, and we shall have it out ?—I do not think you will have it out of me, because I do not recollect anything about it.” He again says he thinks he did not play in the piece. “ Will you swear you did not ?—No. *Q.* But there was a French officer in an English piece played by some one ?—Yes. *Q.* But not by you to the best of your recollection ?—No, not by me ; I want to know whether you are asking me about this particular night of the theatricals, or any other time of my stay. *Q.* I am asking you during your stay at Burton Constable on that one occasion ?—I have been thinking you were asking me the particular time. I know very well what you want me to answer. *Q.* On that occasion, did you play anything ?” Then comes this remarkable answer : “ Yes, I danced the ‘ can-can ’ in the library. I thought you were alluding to the night in the theatre. **LORD CHIEF JUSTICE BOVILL :** Will you be kind enough to repeat that ?—I danced the ‘ can-can ’ before a lot of ladies and gentlemen in the library, my lord ; they asked me. **THE SOLICITOR-GENERAL :** This was in 1847 that you danced the ‘ can-can ’ in the library of Burton Constable before a lot of ladies and gentlemen. 1847, was it, or 1848 ?—I am just thinking. *Q.* The ‘ can-can ’ in 1847 or 1848, in the library of Burton Constable, that you swear ?—That I most positively swear.” I suppose the question the learned Solicitor-General was putting implied that the ‘ can-can ’ was of more modern date than 1847 or 1848. I do not know whether he was instructed on that point, and I am sure I do not know how it is. I am not acquainted with the ‘ can-can ’ dance, and I do not know when it was first introduced into the world, whether in 1847 or 1848. What one has generally understood is, that it is not the most decent of dances ; but I do not know whether it is or not. Again he is asked, “ Did you on that occasion play anything, take a part in anything, as an actor ? You see now you recollect the dancing, possibly you may recollect the acting. Did you act a part on that occasion ? and when you have told me that, I will ask you with whom ? Did you act a part ?—No, I do not recollect acting a part. *Q.* Was Mr. Radcliffe there ?—Well, he says he was, but I do not believe him. *Q.* Was he there ?—I do not believe he was. *Q.* Will you swear he was not ?—No, I cannot swear that he was not. *Q.* Will you swear that you did not act with him ?—Yes. *Q.* That you swear ?—Yes, I will swear I did not act with him. *Q.* Did you take any part in any performance with him ?—I think not. *Q.* Will you swear

you did not?—I have no recollection of it. *Q.* Will you swear that you did not; will you swear that you did not take any part in a performance before the ladies and gentlemen at Burton Constable, with Mr. Percival Radcliffe?—I certainly did not. *Q.* Will you swear you did not?—I think I might safely swear I did not. *Q.* Will you?—Yes, I will swear I did not. *Q.* Now would you be surprised to find that Roger Tichborne acted a French student with Mr. Percival Radcliffe, as another French student?—I did nothing of the kind.” Gentlemen, Sir Percival Radcliffe was examined before you about this visit. He told us he spent some time at Burton Constable. He was there from Christmas, 1847, into the early part of 1848, and Roger Tichborne was there for a fortnight. “During that fortnight you speak of did you know him intimately?—Yes, very intimately. We were two quite young fellows together. I was about, I suppose, two or three and twenty, and he was, I know, about nineteen. *Q.* And were you constantly together, day by day, and conversing together?—Certainly, constantly together; dining both in the same house, on a visit to Sir Clifford Constable. *Q.* Were there any amusements you remember going on at that time?—Yes, perfectly; acting, among other things. The late Lady Constable was exceedingly fond of acting, and we used frequently to get up little plays. Sometimes they were regular formal plays which were prepared some time beforehand, and at other times they were just little plays—little amusements got up for the afternoon, quite impromptu sort of plays.” Then I recollected a passage of one of Lady Doughty’s letters at this time, and said, “I see that Lady Doughty, in one of her letters, speaks of their ‘acting charades?’—Yes, we used to act charades occasionally, and at other times little French plays. *Q.* Do you remember performing, for example, in a French Vaudeville?—Yes, perfectly well. *Q.* Do you know the name of it?—No; but I can recollect perfectly well some of the incidents in the play. *Q.* Did Roger perform in that Vaudeville with you?—Yes. *Q.* I presume they were played in the French language?—Yes, it was in French. *Q.* Do you remember whether Roger Tichborne performed more than once?—My recollection does not serve me in that matter. My recollection simply serves me as to the incidents in that play, because I recollect we were two students in it; and I recollect perfectly our playing the part of two students; but, as I said before, we frequently did; it was a common afternoon or evening amusement. *Q.* During that period did you become so well acquainted with him that if he lived you would be able to recognise him?—I have not the slightest doubt that I should recollect him. I remember his appearance very well indeed. *Q.* Was that the only time you saw Roger?—That was the only time I ever met him. *Q.* Do you remember whether you were there all the time he



was there ; whether he left you there when he left ?—That I do not recollect. *Q.* Did you ever hear of Roger dancing the ‘can-can’ there before the ladies ?—Oh, dear no ; it is a sort of thing I am quite positive Lady Constable would never have permitted. There was always a great deal of society in the house. There was in the house, all the time I recollect it, a number of people, and first-rate society. *Q.* Persons of rank ?—Certainly ; it was a sort of dance that could not possibly be danced before people of that rank in society.” Gentlemen, if this evidence satisfies you that Roger, on the occasion of this visit, played a part in a French piece, though he might wholly have forgotten not only the play and the part he played in it, could he have forgotten the fact itself, when it was recalled to his memory by questions concerning it ? So much for the visit to Burton Constable.

Now at that time, or about that time, a visit was paid by Roger Tichborne—one visit at all events, if not more, certainly one visit for a day or two—to Townley, the seat of Colonel Townley, on an occasion when Mrs. Townley, Roger’s cousin, and her husband, were staying at Colonel Townley’s place, close to Burnley. This was made the occasion of asking some questions of the defendant as to his knowledge of Townley. He was asked whether he had ever been there, and answered in the affirmative. “*Q.* What sort of place is it ? What sort of place ?—What do you mean ? *Q.* I mean is it large or small ; is it brick, or marble, or stone, or tile, or what sort of place is Townley ?—Townley is the old seat of Colonel Townley, called ‘Townley.’ *Q.* You mean the place is called Townley ?—Yes. *Q.* Just give me a sort of notion of what Townley is like ?—I cannot say ; how can you expect me to bear it in mind sufficiently to describe it to you ? it is not at all likely. *Q.* You say you have been there—do you mean to stay ?—Yes, I have been there from Stonyhurst ? *Q.* Over there from Stonyhurst, have you ?—Yes. *Q.* How often ? Is it any distance from Stonyhurst ?—It is about twelve miles from Stonyhurst.” I believe that is right. “You have been over there from Stonyhurst, have you ?—Yes. *Q.* How often during the three years you were at Stonyhurst, twelve miles off. I suppose you went pretty often ?—No, I did not go very often. *Q.* How often did you go ?—I do not remember going more than twice, I think. *Q.* But are you sure you went twice ?—Yes, I am almost certain I went twice.” He is pressed about it, but I do not think anything came of it. He seems to have been quite right as to that ; Roger Tichborne does not appear to have been there more than once or twice when Mrs. Townley was staying there. Then he is asked about the place. “What sort of a place is it ? I don’t expect you to give me a George Robins’s advertisement description of it, but the sort of place : what kind of a house is it ? Is it in a

park?—Yes, Colonel Townley's house is in a park. *Q.* That you remember?—That I remember. *Q.* A large park?—Really I did not notice. *Q.* Do you drive up through gates and a path to it?—I believe you do drive a certain distance. *Q.* Surely you can remember whether you did drive through a park to the place where you went to see your cousin?—I do not see why you should put my cousin's place, because it did not happen to be my cousin's place, and I did not go there to see my cousin. *Q.* Did not you?—I told you it belonged to Mrs. Townley's husband's brother; you might make out that as a cousin, you can if you like. *Q.* Did you go to see your cousin or not?—My cousin might have been there at the time; I do not recollect whether she was or not. *Q.* How came you to go except from your connection with your cousin?—That is right enough. *Q.* So I should suppose; and if you went as a connection of your cousin's, I should have thought you went there to see her?—To the best of my belief she was there at the time. *Q.* If you do not like that, I will withdraw the expression. When you went over to Townley, are you quite sure you drove up through a park?—I think, to the best of my recollection, yes. *Q.* Well, to the best of your recollection, surely you can tell me that, cannot you?—I am telling you, ain't I? *Q.* I mean, can you tell me whether you drove up through a park?—I believe I drove up through a portion of a park to it. *Q.* But is it a good way up from the place of Townley?—No, not so very far, I think. *Q.* What is your recollection? Is it in the place itself, or is it in a park?—It is in the place itself, at some short distance off. *Q.* You mean that there are houses round it?—No, I do not mean to say that there were houses round it. *Q.* I beg your pardon, I misunderstood you; you said 'in the place itself;' what do you mean by that?—I mean Townley by that. *Q.* Is Townley a place beside the house?—Yes; there is a village called Townley. *Q.* Is it in the middle of the village?—No, it is not; I told you it was in a park. *Q.* I really do not know what you mean: you say it is in the middle of the place itself; what do you mean?—I did not say it was in the middle of the place. *Q.* I thought you did?—If I did, then, you are making me say anything you like, because you will not understand me. *Q.* What I want to know is, whether Townley, the place you went to visit, is a house in a park?—A house in a park, to the best of my recollection. *Q.* Or is it a house in a place called Townley, with houses around it?—To the best of my recollection there is a village called Townley, and where Colonel Townley lived is in the park close by." According to Mrs. Townley there is no place or village called Townley, but there are straggling houses between the town of Burnley, to which Townley Park is near, which possibly might be mistaken for a village, and although there is no place called Townley, yet I can easily understand a man making a

mistake where there are straggling houses leading up to a place, in supposing these houses formed part of a village, and that the village was called Townley, whereas, in fact, it is only Colonel Townley's seat that is properly so called. I do not think very much of that. Far more serious was the mistake he made in telling Mrs. Townley, at the meeting at Croydon, that Townley was near Bath. Then he is asked about the description of the house, whether it is brick or stone, red or white, and he says that he does not remember. "Q. Was it a large red brick house, or a stone house with a portico, or what?—I do not remember what it was at all. Q. Was it long and low, or square and high?—I do not remember." Then comes a question about towers: "Were there great towers about it, or what?—Towers about it? Q. Yes, you know what a tower is?—But I do not exactly know what you might construe into a tower afterwards. Q. We will see: were there?—I do not remember. Q. You do not recollect whether there were towers at each end and a high tower in the middle?—No, I do not." I think the Solicitor-General was there somewhat at fault, because, according to Mrs. Townley, there are four towers—two at the junction of the wings with the body of the house, and two at the extreme end of the wings, but there does not seem to be a tower in the centre, as the Solicitor-General suggested. But then if the defendant had any recollection of the house, the question about towers might very well have brought back the towers to his mind, especially as it seems that these towers are a very striking feature in the building. Mr. Serjeant Parry asked Mrs. Townley, "Is there anything outside the building which attracts the attention of a visitor?—Yes, such a curious old house. One wall is very old—supposed to be of Henry the Second's time. Q. And towers outside?—There are four towers. Q. Are they conspicuous to catch the eye as you drive up to the house?—Yes, they are." The defendant's recollection was manifestly very imperfect. At the same time one does not remember every house one has been at. It would be only where there is something particularly striking in the appearance of a house that after many years one would expect a recollection of it to remain impressed on the memory. Whether you think Townley was such a house you must judge. That Roger went from Stonyhurst to this place, a distance of about twelve miles, the defendant at the time he was cross-examined on the trial in the Common Pleas knew; but when Mrs. Townley first saw him, if she is accurate in her statement, one of the questions by which she tested him was whether he remembered being at Townley. He said he did. But when she asked him where Townley was, he said near Bath; which, inasmuch as Townley is in Lancashire, within twelve miles of Stonyhurst, was certainly a very incorrect answer for him to make, and one to which more importance attaches than to



his mistake in supposing the straggling suburb of Barnley to be the village of Townley.

Gentlemen, we have now brought Stonyhurst to a close, and with it the year 1848, and I enter now on the commencement of the year 1849, the year of Roger Tichborne's preparation for the army. After leaving Knoyle in the November of 1848, Roger went to Tichborne, and stayed there till the beginning of 1849. We have a letter from him to his mother on the 1st of January, 1849, in which he says how happy he is at Tichborne; he is spending his time usefully as well as agreeably, not only shooting and hunting—shooting he more especially refers to—but reading instructive books; and he asks her to send him one or two. After writing that letter, he goes on two visits, the first to Captain and Mrs. Washington Hibbert at Bilton Grange, and the other to Bath.

The visit to Bilton Grange is not itself of very great importance. I think he had been there twice before, for a day or two, on his way to and from Stonyhurst. There now comes a visit of a fortnight's duration. Nothing particular passed on the occasion of that visit, but it was long enough, one would have thought, to impress on his memory a recollection of the house, which, if we may judge of it from the pictures shown us here, is certainly, in point of architecture, one of very remarkable construction. The defendant was asked, in the first place, the name of the seat of Captain and Mrs. Washington Hibbert. He did not remember it at first, but he does afterwards; it comes to his mind in the course of the examination. He is asked where it is, in what county, and he first says in Yorkshire. In point of fact it is Warwickshire, and not very far from Rugby. Rugby is their post town. To the question, "Where is it?" he answers, "I think to the best of my recollection it is in Yorkshire. Q. You cannot remember the name. Did you ever stay there?—Yes, I have been there. Q. Often?—Not very often. Q. How often?—Twice or three times, I think. Q. When?—Oh, many, many years ago. The name is Bilton Grange. Q. Bilton Grange?—My memory is getting so bad, I do not know; I cannot get it collected at all. First you go on one subject, and then you go on another. Mr. SERJT. BALLANTINE: What Grange did you say?—Bilton Grange. The SOLICITOR-GENERAL: Bilton Grange in Yorkshire, as you think, to the best of your recollection." Then a scene takes place in court; somebody, either intentionally or unintentionally, either meaning it to be heard, or not meaning it to be heard by the defendant, pronounced the name of "Warwickshire," and then the defendant said, "I said either in Warwickshire or Yorkshire; I forget which it is, I am sure." LORD CHIEF JUSTICE BOVILL called upon the person, whoever had said "Warwickshire" to stand up; but, however, nobody did. "Q. Where was it? whereabouts in Warwickshire?—I do not

remember, I am sure. *Q.* Whereabouts in Warwickshire?—I do not recollect whereabouts it is. *Q.* Is it in Warwickshire at all?—Yes, I believe so. *Q.* Or Yorkshire, which?—It is in Warwickshire, I think. Yes. *Q.* You think it is in Warwickshire?—Yes. *Q.* Where in Warwickshire? whereabouts?—Do you mean what station you get out at? *Q.* Yes; near what place is it? near what large place? The LORD CHIEF JUSTICE: Either station or town. The SOLICITOR-GENERAL: Either station or town; I do not care; how do you go there? When you went to stay there, what station did you get out at?—I fancy it was Rugby or Crewe, I do not know which—Rugby, I think. *Q.* Rugby, you think?—I think so. *Q.* Which do you think it was, Rugby or Crewe, on consideration?—Really, I do not remember, I am sure.”

Rugby and Crewe are, as you know, the two great stations on that line. Rugby is the principal station and the post town for Bilton Grange, as might easily be ascertained by looking in the ‘Court Guide.’ I had it in court the other day, and looked and found it, but it by no means follows that the defendant had prepared himself for the question. Then he is asked whom he met there, and he says, “I do not recollect who I met there. *Q.* Can you recollect anything you did there?—I recollect meeting my cousin Bertram there, if that is what you mean. *Q.* Bertram who? Is Bertram a surname or christian name?—Bertram Talbot. *Q.* I am not so well acquainted; I do not know them by their names. You met Bertram Talbot there; anybody else?—I cannot recollect.” Now Mrs. Washington Hibbert, the mother of Mr. Bertram Talbot, who was afterwards Earl of Shrewsbury, was asked if she remembered the fact of Roger Tichborne ever meeting Bertram Talbot at Bilton Grange, and she says, “No, never.” Dr. Kenealy asks, “Was he there in the Christmas of 1848?—No, it was in the month of September. *Q.* I suppose he would be a gentleman who would be a great deal spoken of at Bilton Grange?—I dare say he was, poor boy. *Q.* He was presumptive heir to an earldom, and naturally there would be a good deal of conversation about him there?—I dare say there was.” But the defendant does not say there was conversation about Bertram Talbot; he says he actually met him at Captain Washington Hibbert’s, at Bilton Grange. Mrs. Hibbert says her son was there in September, but not in the winter when Tichborne was there. *Q.* “I have spoken of your son Bertram. Did Roger ever meet Bertram Talbot at Bilton Grange?—No, never.” Then, the defendant having been first asked, “What sort of a place is Bilton Grange?” to which he answers “I do not recollect,” a coloured drawing of Bilton Grange is put into his hands, and he fails to recognise it. When he is told it is Bilton Grange, he says, “You must take into consideration that that is a bird’s-eye view, and I have certainly never had a bird’s-eye view of it before.” Is that a satis-

factory reason? Although in the view presented to us you may be supposed to be looking downwards on the house, the house is a very remarkable one, and the question is whether, in that or any other form in which it could be submitted to the eye, a person who had once seen it and stayed in it would not at once recollect it?

Proceeding from Bilton Grange, Roger Tichborne went to Bath. His uncle Robert was at that time living at Bath, as were also the Nangles; I am not sure whether Mr. Nangle was still alive, but Mrs. Nangle and her daughters and two sons were living there. At all events the one son was staying at Bath. Sir Edward and Lady Doughty came over from Tichborne, and Roger, upon coming from Bilton Grange, joined them, so that there was a regular family party assembled. Sir Edward and Lady Doughty were not staying at the uncle Robert's house, but had taken apartments of their own, and the Nangles lived in their own house, and Roger Tichborne went to an hotel—the White Lion, or whatever the name of it was. Mr. Robert Tichborne lived at No. 102, Sydney Place, as we know from letters written by Sir James Tichborne to his wife, in which he mentions his being at 102, Sydney Place. There were one or two incidents which happened while Roger Tichborne was there. There was a ball given by Mr. Robert Tichborne, and Sir Edward Doughty and Lady Doughty came to the ball; and Sir Edward Doughty, being very infirm in the leg, having suffered from paralysis, while going downstairs got a very severe fall, which at the first moment caused alarm to the members of the family there assembled. It turned out to be nothing serious, still it created a sensation at the time. The ball was remarkable for another circumstance. Just before the ball was about to begin, Mrs. Allen, the butler's wife, was delivered of twins. Both these things were put to the defendant, but he recollected neither of them; and what is still more striking, he does not recollect that any other members of the family were there. He was asked, "Was there, do you recollect, in the house at that time, anybody staying with Mr. Robert Tichborne; any other member of the family?—I have no recollection, I am sure, of who was in the house. Q. Do you remember any other member of the family besides Mr. Robert Tichborne, Mrs. Robert Tichborne, and yourself. I suppose Mrs. Tichborne was there as well as Mr. Tichborne?—Yes. Q. Do you remember anybody else?—No, I do not remember any one else being there. Q. Do you recollect any accident happening at the ball?—No, I do not recollect the ball, so I cannot recollect any accident happening. Q. Do you recollect any event happening during the ball?—No, I do not. Q. What other members of the family were in Bath at that time; if you do not remember their being at the ball, what other members of the Tichborne family, or connections of the Tichborne family, were in Bath then?—I do not



remember. *Q.* You do not know?—I do not remember. *Q.* How long were you at Bath, at Robert Tichborne's? I do not forget that you said you did not sleep there. I am not catching you, but I mean when you were on that visit to Mr. Robert Tichborne?—How long was I there? *Q.* I do not say to a day, but about how long?—Really, I cannot tell. *Q.* I mean was it a week, a fortnight, a month, or two months, or what?—I think it was about eight or ten days, or something like that. *Q.* Eight or ten days?—I do not say positively that. *Q.* Neither do I. When I say eight or ten days, of course I do not fix you to an hour or a day, but that is about the length of the stay, as far as you recollect?—Yes. *Q.* Cannot you recollect whether there were other members of the family with whom you were spending your time at Bath at that time?—No, I do not remember, I am sure. *Q.* I will first remind you about the death's head pipes; you recollect that, you know. Could not you tell us something of the members of the family, some of your relations who were there at that time, and with whom you passed your time. Who were they? Do not you recollect?—No; I do not recollect who was there. *Q.* Was either of Mr. Robert Tichborne's brothers there at that time?—I think not. *Q.* Are you able to say that for certain?—No, I cannot say for certain. *Q.* What is your impression?—My impression is there were not any of them there." Now, undoubtedly Sir Edward and Lady Doughty were there, Sir Edward having met with the accident on that occasion. Miss Doughty came over to them from the convent school at Taunton, as her diary shows, and then, as she told us, saw Roger for the first time for eight years. "*Q.* Did any accident happen to either of Mr. Tichborne's brothers at that time?—I really cannot say; I do not know whether any of them did." Then he is asked about Mrs. Allen having twins, and he says, "Upon my word, I do not know. How can you imagine I can remember these things? *Q.* But as you remember the death's head pipes —" and so forth. Then about his uncle's fall he is asked, "Should you be surprised to find that there was a ball at Mr. Robert Tichborne's house, at which Roger Tichborne was, that members of the family—I will not at the moment give you the names—were there, and that Sir Edward and Lady Doughty were there, and Sir Edward Doughty fell down backwards, and had a very bad fall down the last flight of stairs, and that Mrs. Allen, the very night of the ball, while the ball was going on, was delivered of twins?—I am not at all surprised. *Q.* You are not at all surprised?—I do not believe it happened on that occasion. LORD CHIEF JUSTICE BOVILL: You do not recollect anything of the kind, you say?—No. MR. SERJT. BALLANTINE: And he added, my Lord— The SOLICITOR-GENERAL: He does not believe it happened. MR. SERJT. BALLAN-

TINE : No, he does not believe it happened on that occasion. The SOLICITOR-GENERAL : Would you be surprised to find that you had forgotten it if it did happen?—No, I should not be surprised ; you are alluding to one time, and it may so happen that Sir Edward was not there at that time.” We know perfectly well that he was there.

We know Roger Tichborne was at Bath at this time ; we know it from Lady Radcliffe’s diary and from the evidence of the Nangles, as well as from Roger’s letters ; and I do not find that Roger Tichborne, after that time, ever paid any other visit to Bath ; certainly not when Sir Edward Doughty could have been there. Serjt. Ballantine says, “ He says Sir Edward was not there at that time. The

SOLICITOR-GENERAL : Very well. Was Mrs. Nangle there?—No ; I do not remember Mrs. Nangle being there. Q. You do not remember Sir Edward and Lady Doughty being there?—No ; I do not think they were at that time.” Then he is asked about the Nangles ; he does not remember either of the young Nangles being there. “ Were either of the young Nangles at Bath?—I do not

remember meeting them at Bath then. Q. Did you ever meet them at any other time at Bath?—I think not at Bath.” Then he is

asked about that little escapade of young Nangle and himself trying to get into the tradesmen’s ball where they had no business. “ Should you be surprised to find that young Nangle and you tried to go to a tradesmen’s ball, and they would not let you in, saying you would not let them come to your balls, and they would not let you come to theirs?—I am not surprised to hear you say so. Q. Do you recollect it?—No, I do not ; because I do not believe it ever happened.

Q. Are you certain it never did?—I feel quite certain. Q. Will

you say you are certain it never happened?—Yes, I say I am certain it never happened.” You must judge between him and Major Nangle,

who gives, as you remember, a detailed account of the circumstance. Then he is asked whether Major Nangle was not at that time courting

the young lady, or was engaged to the young lady, whom he afterwards married, and whether he did not make Roger his confidant,

and whether Roger did not occasionally ride over with him to the place in the neighbourhood at which the lady in question lived. The

defendant says he did not ride over with him, and I think he turns out to be right. Major Nangle says he does not remember Roger

going over with him, but he did make him his confidant, and told him how things were going on with regard to his courtship. Lastly, the

defendant says he does not remember the Nangles being at Bath, or having any conversation with them in French, which, according to

their account, was the language they spoke with one another.

From Bath Roger Tichborne returned to Tichborne, where he remained till the ensuing August, and we now enter on the period of his preparation for the army. He is now working at his problems

in Mr. Gosford's office, and, as the spring advances, is taking lessons from Mr. Moberly at Owlesbury. You will remember that application had been made to the Horse Guards for a commission at the close of 1847, and the reply of Lord Fitzroy Somerset had been that the name should be put down on the duke's list for a commission when his turn arrived. We know that in the course of 1848, after he left Stonyhurst, Mr. Seymour took him to the Horse Guards and introduced him personally to Lord Fitzroy Somerset, reminding Lord Fitzroy Somerset of his promise, so that Roger became personally acquainted with that distinguished officer. Months, however, passed, and at last Roger took the very decided and bold step of writing to Lord Fitzroy Somerset himself, which he did on the 19th of June, and the answer came by return of post, telling him he was to have a commission in the 6th Dragoon Guards—the Carabineers—subject to his passing the examination, which had then been introduced for the first time. He had a very short time to prepare, and he had to work very hard, because this letter was written on the 20th of June, and he was to go to Sandhurst for examination on the 1st of July. His father writes to request that one of the Colonels Greenwood would go over to Sandhurst with him; and Colonel George Greenwood kindly undertook to do so. We know what occurred. On getting to Sandhurst on the evening of the 30th of June they could get no accommodation at the hotel at Sandhurst, the 'Duke of York,' and they were obliged to go back to the 'Tumble-down Dick' public-house, in the immediate neighbourhood of the Farnborough Station. The next day he went in for the examination. He passed, as the official paper shows, in English, French, history, geography, and fortification, but failed in arithmetic, but he was told he might have his commission if he went through a second examination, preparatory to joining the regiment, on the subject in which he had failed. It appears that some arrangement was afterwards come to, that the examination should be in mathematics, and that if he could get certificates of proficiency in mathematics, any further examination would be dispensed with. He thereupon went to London, and there studied with a professor, from whom he got satisfactory mathematical certificates, and the result was that he was allowed to join his regiment without further examination.

Now this, of course, is an important era in Roger Tichborne's life, and it was thought desirable by the defendant's counsel in his examination-in-chief to go into this matter, and Mr. Giffard examines him accordingly. "Did you go to Sandhurst for examination before you joined your regiment?—Yes. Q. Was that before your appointment or before you joined your regiment?—Before my appointment." That is not quite accurate. He was appointed to the 6th Dragoon Guards, though he did not, in point of fact, get his commission before



his examination. However, perhaps in such a case the answer might pass muster. "Was there anybody who helped you before you went to Sandhurst—I mean helped you to read?—Yes, I was studying for going through my examination at Grosvenor Street. Q. That was at Mr. Seymour's, you say?—That was Mr. Seymour's house. Q. Was it Mr. Seymour who helped you?—No, it was at Mr. Seymour's house. Q. Was it Mr. Seymour who helped you, or who did?—No, I think a person came in who helped me. I went from the house. LORD CHIEF JUSTICE BOVILL: You said first you had a person in.—I did not intend to imply that, my Lord. Q. Then what is it you now add?—I used to go to a professor. Mr. GIFFARD: Before you came to him, had anybody helped you while you were at Tichborne?—Yes." Now observe this: "Who helped you then?—Colonel George Greenwood; he went with me to Sandhurst. Q. I think you said Colonel Greenwood went with you to Sandhurst. Did you get a certificate?—I did. Q. Do you know what has become of it?—I have not the slightest idea." Now, the certificate there referred to would be a certificate obtained at the examination, which was the only examination which up to that time had been in any way mentioned or referred to. Then there ensues a wrangle about the admissibility of secondary evidence about the certificate, and then the claimant is asked by Mr. Giffard, "Be that as it may, you did go to Sandhurst, and you did get a certificate? I will not ask you at present what was in it?—Yes."—That is to say, a certificate from Sandhurst; for that is what the question implied.—"Q. You were in Grosvenor Street immediately, I think you say, before you went to Sandhurst; am I right in that, or did you go back to Tichborne? I went back to Tichborne." That question implies, as does the answer, that he was at Grosvenor Street studying before he went to Sandhurst. But that is wholly incorrect; he never was studying there at all before he went to Sandhurst. "LORD CHIEF JUSTICE BOVILL: You say you went back to Tichborne, when? Mr. GIFFARD: From Grosvenor Street, before he went to Sandhurst, my Lord." An entire and complete mistake. On cross-examination he gets still more confused. "How soon after you left Stonyhurst did you become aware you could get a commission in the army?—Really you puzzle my brain. Q. I do not ask you to a week or even to a month; but about how soon after? Can you tell me?—I cannot tell you within a month. Q. I will be content with more than a month?—I think it was four or five months after."—It was full twelve months—"Q. Four or five months after you left Stonyhurst, you became aware you were to have a commission?—I did not say that. Q. I thought you did; that was my question: how soon after you left Stonyhurst did you know you would have a commission in the army?—I could not know that until

I passed my examination." That is a mistake; he knew he was to have a commission subject only to his passing the examination. "Q. How soon after you left Stonyhurst did you begin to prepare for your examination?—My answer would apply to that. Q. Four or five months after?—Yes, I think so." Now observe, "Where did you spend your time chiefly while you were preparing for your examination?—In Grosvenor Street." That is a complete mistake; he never went to Grosvenor Street till after the examination at Sandhurst. It was in consequence of failing at the examination that he went there at all. "Q. At Mr. Seymour's?—At Mr. Seymour's. Q. Who was there?—Who was there? Q. In Grosvenor Street, who was in the house when you were there?—Do you mean what different people were there? Q. Yes?—At different times different people were. Q. Were Mr. and Mrs. Seymour there?—Henry was there. Q. Any one else?—Really I do not recollect who was in the house. Q. I beg your pardon: it was Mr. Henry Seymour's house you went to, was it?—Of course it was. Q. I thought you meant Mr. Seymour's?—It was Mr. Henry Seymour's house. Q. I mistook you?—I mistook you; I do not know what you are trying at. Q. Not the least in the world, you corrected me. When I said Mr. and Mrs. Seymour, you said Mr. Henry Seymour's; what do you mean?—I said Mr. Henry Seymour was there. Q. I apologise to you. It was Mr. Henry Seymour's house you were in, and not Mr. and Mrs. Seymour's?—Just so." "It is my mistake," says the Solicitor-General; "we are all liable to error. Then Mr. Henry Seymour was there? Anybody else? Was his brother often there, or sister?—Yes, I have seen both his brothers and sisters there too. Q. During the time you were there?—During the time I was there, to the best of my recollection." This again is a mistake. Roger Tichborne writes from Grosvenor Street that it is fortunate for him that he is a misanthrope as he is all alone. The family were out of town. "Where," asks the Solicitor-General, "was Mr. Seymour's house? had he a house in town at that time or not?—Which Mr. Seymour? Q. The father?—I really cannot say whose house it was; all I know is Mr. Henry Seymour was there. Q. You properly enough corrected me when I called it Mr. Seymour's; you said, Mr. Henry Seymour. Your grandfather, Mr. Seymour, had he another house in London?—I believe that house belonged to him very probably." So that having first been wrong he now gets right. "Q. Do you mean that house? or was there another to which he came when he came to town?—I believe it was the same house; I really do not remember. Q. Do you not know whether your uncle and your grandfather had separate houses or not?—No, I think not. Q. How was it? Do you not know one way or the other, whether your uncle, Mr. Henry Seymour, had a separate house from

his father?—I do not remember Mr. Seymour having a separate house. I do not remember Mr. Seymour ever being in town.” So that he seems to have thought Mr. Seymour, the father, had not a house in town. All this strikes me as very strange. Roger Tichborne visited and stayed at Mr. Seymour’s house in 1845, before he went down to Stonyhurst; Mr. Seymour writes to Mrs. Hopkinson saying he had just left them for Stonyhurst. Roger Tichborne was so intimate with Mr. and Mrs. Seymour that he used to go to their house in Grosvenor Street, when he was in London; and when he left Stonyhurst in 1848, in August, the first place he went to was Mr. Seymour’s house in London, where he stayed some days, till he went down with his father to Clifton. One would suppose Roger Tichborne would have known whether that house was old Mr. Seymour’s, or that of his son, Mr. Henry Seymour. One is, therefore, struck with the answer: “I do not remember Mr. Seymour having a separate house; I do not remember Mr. Seymour ever being in town.”

Next he is asked who it was from whom he received instruction; and then come some remarkable answers. “What did you do by way of preparation for the army? Did you read by yourself, or had you any tutor?—I had a tutor. *Q.* Who was he?—He was a professor, but I really forget who he was. *Q.* Cannot you tell me the name of the professor who prepared you for the examination in the army?—I do not remember what his name was. *Q.* Where did he come from? do you know that?—Not far from the neighbourhood, I think. *Q.* You mean the neighbourhood of Grosvenor Street?—Yes: I do not mean to say Grosvenor Street—somewhere in London. *Q.* When you talk of the neighbourhood, I suppose you mean what any Londoner means. He came from London, is that what you mean?—Yes. *Q.* Cannot you tell me where he came from, or who he was, or what was his name?—No, I do not recollect what his name was. The man I am alluding to was, I think, a professor of fortification. *Q.* Cannot you tell me where he professed fortification?—Where he professed fortification? *Q.* Yes; at what college, or school, or establishment, or seminary he was a professor of fortification?—I do not know. *Q.* You do not know where he professed?—Where he gave his lectures on fortification? *MR. SERJT. BALLANTINE:* Everybody is a professor nowadays. The *SOLICITOR-GENERAL:* Did he give lectures anywhere?—Not that I am aware of. *Q.* He professed fortification?—He professed to learn me fortification. *Q.* Did he teach you fortification?—He did. *Q.* What book on fortification did you read?—I am sure I do not remember what books I read. *Q.* Can you remember one?—No, I cannot. *Q.* What sort of book was it—English book or French book, or what—or Latin?—Perhaps you would like to know if it was Greek.



Q. I do not wish to press you as to Greek; I am content with English, French, or Latin?—It happened to be English. Q. Do you remember the title of it?—No, I do not. Q. Fortifications; did you go far in fortifications?—Sufficiently to pass. Q. Sufficiently to pass in fortifications? What else did you learn? Did he teach you anything else but fortifications?—Yes, I believe he did; he taught me the landmarks. Q. Do you mean in surveying? or what?—The landmarks of England; I forget what they are; I might express myself wrong; I have no doubt you know what I mean. Q. You give me credit for more information than I possess; I really do not know?—I am sorry I cannot explain it to you. Q. Is it a book or a place? What are the landmarks of England?—What are the landmarks of England? Q. Yes?—The landmarks of England insinuate the formation of England at different points, which every officer is bound to learn, I believe, before he can pass. Q. What points?—I do not know; I cannot go into the different points with you. Q. Cannot you give me one?—I cannot give you half a one. The SOLICITOR-GENERAL: The only points that occur to me are the Needles. Mr. SERJT. BALLANTINE: You are too sharp. The SOLICITOR-GENERAL: Had it anything to do with places? I really do not know what you mean by the landmarks of England. Just give me one. What is a landmark of England?—I tell you I cannot give any explanation. Q. Every officer had to pass in this landmark, had he, at that time?—Yes, I believe he had. Q. Fortifications and the landmarks: was there anything else that you learnt? Shall I find the landmarks in the certificate? Did you pass in landmarks?—I cannot tell you whether it is in the certificate or not. I passed in landmarks. Q. Landmarks was a head of examination?—I do not know—probably it came under fortification. Q. What sort of study is it about landmarks? What kind of information do you get about them?—I told you I cannot go into any explanation about them. Q. At this time it would be interesting to know what the sort of education was in 1849?—If I had known you were so particular as to want to know, I could soon have let you know.” A significant answer. But what he can have meant by passing in landmarks it puzzles one to conceive. That an officer going into a cavalry regiment should be required to pass in landmarks would be a strange thing. If it was a sailor, who has to know the navigation of the coast of England, a knowledge of landmarks, as guides to a seaman, might be essential; but what a cavalry officer should have to do with landmarks it is difficult to imagine. I fancy, however, we discovered the solution. Roger had to pass in history, and there is a book for coaching purposes called “The Landmarks of English History,” and the defendant may have become acquainted with the book. As to any landmarks with reference to the science of forti-

fication I believe that to be out of the question. That is the only solution I have been able to discover as explaining this study of landmarks and the supposed passing in them. Then comes what leads to a very remarkable statement: "What else besides landmarks, which you include under fortifications (at least you think they may have been), what else was there besides that you learnt?—For the purpose of passing my examination? Q. Yes; I suppose that was not all they examined you in?—No. Q. What was there besides? —I have no recollection what there was besides. Q. No recollection of any other subject?—There were subjects, but I do not remember what they were; I was only coached up to go through it, but I do not know what there was afterwards. Q. That is exactly what I want to know, who coached you?—George Greenwood. Q. How long was George Greenwood coaching you up?—From time to time I used to see him a great deal. Q. In London?—No, generally down in Hampshire. Q. Where?—At Tichborne and Brookwood. Q. While you were reading for the army?—After I had read, and while I was reading, for the army." That is a statement about which there could not well be a mistake one would think. If Roger Tichborne, the defendant must have known whether, when he was reading, Colonel Greenwood assisted him or not. "Who coached you?—Colonel George Greenwood." Colonel Greenwood was called and was examined upon other matters. The question whether or not he had assisted the defendant in the way that would be called coaching him was not asked of him. I was very anxious to see whether the defendant was right or whether he was wrong. If he was right, it would have been an instance of knowledge and memory upon a matter which of course interested him so much at the time; if he was wrong, it was a very striking proof of the insufficiency of his knowledge. I therefore asked Colonel Greenwood this question: "You said you knew he was going to be examined; you were aware of that beforehand, I suppose?—Yes. Q. Did you help him at all?—No, not the least. Q. You did not coach him?—No. Q. Did you happen to know whether he had been preparing himself for that examination?—No, I knew nothing of it. His father sent a letter from Paris to ask that one of the Colonel Greenwoods should go with him to Sandhurst. Q. You knew nothing of the preparatory course he had been going through?—Nothing whatever." Nothing can be more positive. What can have induced the defendant to assert that Colonel George Greenwood coached him—in other words, gave him instruction for the purpose of enabling him to pass that examination—I must say I cannot understand, and am at a loss to conceive, unless it may have been that, being aware that Colonel Greenwood accompanied Roger Tichborne to the examination at Sandhurst, he may

have hastily inferred that the Colonel had assisted Roger in his preparatory studies.

I proceed to finish the subject of the preparation for the army. The defendant was next asked about the number of the teachers he had, whether one or more professors: he says, "I am not certain about that; there may have been two; I cannot say. *Q.* Was the name of one of the persons Moberly, or Maberly?—Really I cannot say, but I believe it was some kind of name of that description. I believe it was some kind of name like that; I have no recollection of the name, therefore I cannot say. *Q.* Where did he live?—It appears you have found him out, so it saves me the trouble. *Q.* Never mind; that is no answer to my question?—I answered your question, I believe, before. *Q.* I ask you was it Moberly?—I cannot tell you. *Q.* Where did he live?—That I do not know. *Q.* Do you know where he came from, and where he taught you?—No, I do not recollect where. *Q.* Is that the name of the person that you say came to you in Grosvenor Street and taught you—the name of one of the persons—Moberly, or Maberly?—I cannot say, I am sure. *Q.* Does that remind you of the name?—It does remind me of the name, whether of that person or not, I cannot say. *Q.* Where is Owsbury, do you know?—I do not know that name. *Q.* Owsbury?—I do not know it by that name, without you have got any other name for it. *Q.* Or the sound—anything sounding like it?—It might be like bandy, the other day. *Q.* Bandy?—You kept me here an hour, harping on bandy, and I told you I played hockey." I turn to the cross-examination, and find that he said nothing of the sort. He first thought that bandy was a nickname; then that it was a part of the building at Stonyhurst; then he admitted he did not know what it was. "*Q.* You heard that since?—No, I did not; I took the trouble to look in a dictionary. **LORD CHIEF JUSTICE BOVILL:** Bandy?—Bandy and hockey is one game: he kept me here one whole hour as to what was bandy; I could not remember what bandy was. *Q.* What is hockey?—A game you play with a crooked stick and a ball, and I mentioned that. **THE SOLICITOR-GENERAL:** That is your notion of bandy?—Yes. *Q.* We will not revert to that. We left Stonyhurst, and do not let us go back. You may look in the dictionary for Owsbury?—I should look in the directory. *Q.* That is a dictionary for this purpose: you do not know?—I did not say I do not know. *Q.* Did you ever hear?—Hear what? *Q.* Of Owsbury?—I do not recollect. *Q.* Did you know a Mr. Moberly, or Maberly, at Owsbury?—I tell you I cannot say for certain whether that was his name. *Q.* Do you know where Owsbury is?—I do not recollect where it is. *Q.* Is it within a mile and a half of Grosvenor Street?—Not knowing where it is, how can I tell you?" Then a



letter is put into his hand of the 10th of September, 1849, in which Roger Tichborne writes to Mr. Gosford, begging him "to send a note to Mr. Maberly at Owsbury letting him know that he does not intend taking any more lessons from him at present." You remember the rest of the letter. That being put into his hands, he is asked, "Should you be surprised to find that this gentleman was an English clergyman, living within three miles of Tichborne?"—The Solicitor-General is not quite accurate there, it is six miles—"An English clergyman," echoes the defendant, "living within three miles of Tichborne?" *Q.* Yes, living within three miles of Tichborne?—What place did you call it? *Q.* I have given you the spelling of it; I do not pretend to know. You are a Hampshire man; I am not; it is your own spelling, 'Owsbury.' Do not say I have mispronounced it. You have your own writing under your own eye?—If I had, it was only to look at the signature. *Mr. SERJT. BALLANTINE:* Then you had better look at the letter." Having looked at the letter again, he says, "That is the name of some house; there is no village of the name of Owsbury there. *The SOLICITOR-GENERAL:* The place to which you yourself went from Tichborne for three months, two or three times a week?—It is very possible. *Q.* You say there is no village?—I think not. *Q.* You are a Hampshire man; will you swear there is no such place?—If there is, it is some little poking hole, with two or three houses in it, that you would not dream of being a village at all. *Q.* Some little poking hole within three miles of Tichborne; that would be a pleasant thing for the people at Owsbury to read. *Mr. SERJT. BALLANTINE:* Do not assume there is such a place as Owsbury. *The SOLICITOR-GENERAL:* Just tell me what you mean by writing 'Owsbury' in your own note: my friend says I am not to assume it. *Mr. SERJT. BALLANTINE:* Such a village. *The SOLICITOR-GENERAL:* What do you mean by it in your own note?—What I said in it. *Q.* What is Owsbury?—I suppose Owsbury is the name of a house, or something of that kind. I do not recollect even at the present day any village named Owsbury. *Q.* You do not?—I do not; considering for the last three or four years I have been backwards and forwards all round for miles, I do not even now know. *Q.* You say: 'It may be some little poking hole': is it not on the top of a very high hill, with a large windmill on it, three miles from Tichborne?—All I can say is, I have no recollection of the village, or the windmill either. *Q.* Have you of Mr. Moberly?—I have a recollection of going somewhere. *Q.* Where?—I did go to see somebody in the neighbourhood, but not every day for two or three weeks, for three months, as you assert. *Q.* You are getting a little confused. I did not say for two or three weeks, or for three months. What I said was two or three times a week?—I beg your pardon; I cannot say that. *Q.* That you mean to swear?—I mean to swear what?

Q. That you did not go to Mr. Moberly, at Owsbury, two or three times a week, for three months, to prepare for the army?—I think not. Q. Will you swear you did not?—No, I would not swear I did not. The SOLICITOR-GENERAL: Now that you have had your recollection called to it, do you remember Mr. Moberly, and do you remember Owsbury?—I do not remember the names.

Q. Do you remember the place—the place and the man?—I did go in the neighbourhood for a certain time. Q. When?—Before I joined the army. Q. Was it before you had the person in London

who came to teach you fortification, or after?—The letter would imply it was after; I was under the impression it was before.

Q. The letter would imply it was before?—It is the reverse.

Q. ‘The letter would imply it was after, I was under the impression it was before’—Is that it?—Yes; I do not think that was the name.

The letter implies it was long afterwards. My impression was it was previous to that. There is no doubt my impression is wrong, because

the letter is most likely to be correct.” Here the claimant was evidently puzzled by the date of the letter of the 10th of September,

in which Roger says, “Tell Mr. Moberly I am not going to take any more lessons, because I am studying in London.” The defend-

ant had either totally forgotten, or else in the other alternative had never been aware, that there was a preparation for a second examina-

tion. He was not aware Roger had failed at the first examination, but thought he had passed. He is next asked, “What did Mr.

Moberly teach you?—Something in connection with the examination.

Q. ‘Something in connection with the examination;’ what was it?—I believe it was English; correction of English. Q. French and

English?—I did not say French. Q. What did you say?—Cor-

rection of English. Q. Was that all he taught you?—I really do not remember what it was he did teach me.” He appears to have

been quite unaware that Roger Tichborne studied mathematics with a view to the examination, the examination paper having mentioned

arithmetic, but having been silent as to mathematics. We know Mr. Moberly taught him mathematics, as in his letter to Mr. Hopkins of

29th June, he says he cannot come to see him at Alresford because he has to go six miles “to take a mathematical lesson.” Q. “Did

you go to him, or did he come to you?—You said just now I went to him. Q. I ask you whether you did or not; did you go to him,

or did he come to you?—I really cannot say; I think I used to ride over there, if I mistake not. Q. You think you used to ride

over there, and come back?—Yes, and come back. Q. How often?—Really I cannot say. I do not wish to follow your words, but I have no remembrance of how often it used to be.”

Now, Owlesbury,—for “Owlesbury,” and not “Owsbury,” is the name of the place,—is about six miles from Tichborne. The

defendant had never heard of Owlesbury; the people there call it Usselbury. Probably he had not seen it in writing. Or he may have forgotten that the place was written "Owlesbury," and thought because he heard it called "Usselbury" that the place so called was written as pronounced. That is how it is put in the re-examination by Serjeant Ballantine. He was then asked about his preparations for Sandhurst and his going to be examined at Sandhurst. "Now, before doing so you went to some tutor, you have said?—Yes. Q. I think it was put to you whether his name was Moberly?—Yes. Q. Was that the name?—Maberly or Moberly. Q. Where did he really reside? at Owlesbury?—Owlesbury. Q. How do you pronounce that?—Osselbury. Q. Did you or did you not recognise the place when you were asked about Owsbury? LORD CHIEF JUSTICE BOVILL: It was in his own letter. The name of the parish, as I have got it from the Gazetteer, is Owlesbury. Mr. SERJT. BALLANTINE: I have got it; it is Owlesbury. The LORD CHIEF JUSTICE: The letters "le" were left out in his letter. Mr. SERJT. BALLANTINE: Is it called Owlesbury or Usselbury?—Usselbury." But Roger must have known the name of the place perfectly. He could not have been living in that part of Hampshire and have been over and over again to the place to take his lesson from Mr. Moberly without knowing that the name of this place was pronounced Usselbury. But if it was called Usselbury, did Roger know how to write it? In the letter he writes to Mr. Gosford he spells it wrong, but he does not write it Usselbury; he leaves out the "le," and writes it Owsbury, but in the memorandum-book in which he took down the name and the address, evidently for the purpose of going to Mr. Moberly, he has got it perfectly correct, "the Reverend Mr. Moberly, Owlesbury," the proper way. The omission of the "le" in the letter to Mr. Gosford is a mistake in the way of writing; but could he have failed to identify the place, in popular pronunciation called Usselbury, with the Owsbury to which he refers in his letter, and the Owlesbury which he connects with the name of Moberly in the address in his pocket-book? Suppose the question had been suddenly put to Roger Tichborne, "Do you remember going to Mr. Moberly at Owlesbury," he might have said, "The way we pronounce it in Hampshire is Usselbury," but would he have said I do not recollect the name of the man or the name of the place? Would the connection of the name of the man with that of the place have failed to clear away any doubt as to the Owlesbury to which the question referred being the place which was known by the name of Usselbury? Is the explanation given by the defendant satisfactory as to his not being aware what place was meant, because it was pronounced Owsbury, and ought to have been pronounced Usselbury? In your judgment, having gone for so many weeks to this gentleman at this place, would



Roger Tichborne have forgotten the circumstance so as to be unable to give a satisfactory answer to such a question if put to him?

The result of the whole is that the defendant makes several serious mistakes—first in ignoring the preparatory studies at Tichborne, and in supposing that his studies to prepare for the examination took place in London, which they certainly did not; secondly, in ignoring the failure in the examination at Sandhurst, as well as the preparation for a second examination, and that that examination was afterwards dispensed with on the certificate of mathematical proficiency. Could Roger Tichborne have forgotten his failure at Sandhurst, and that he went to study in London in consequence of it, or have confounded his teachers and studies prior to the examination with those which were subsequent to it? And what is not the less remarkable is, that the mathematical studies, as well as the certificate of mathematical proficiency, are wholly unknown. All the defendant knows of are studies in “fortifications,” “landmarks,” and “correction of English.” Nor indeed is it to be wondered at that he should make no mention of mathematics, for as we have seen when on the subject of the Stonyhurst studies, he was not aware of what mathematics meant. Lastly, he says that Colonel George Greenwood assisted him in his studies, or, to use his own expression, “coached” him, whereas it is certain that Colonel George Greenwood never did anything of the kind. Some of these mistakes were attempted to be set right to a certain extent on re-examination. He was then asked whether he was successful in his examination or not; and he says, using a common term with reference to that, “I was plucked.” He is shown the examination papers and the arithmetical problems done at the examination, and he is asked whether the problems are his, with a view to show Roger’s utter want of proficiency in the matter of arithmetic, which, however, seems not to have been so great as was supposed. He is asked, “Can you tell whether or not, on the examination of which that is one of the sample papers, you passed?—I did not pass. Q. Did you subsequently pass an examination?—Not on that; I did not pass on that. Q. On an examination afterwards, on another subject, you ultimately passed, and obtained your commission?—I did. Q. Do you remember yourself what you passed in?—I do not.” Here, again, in the attempt to set him right, we have another serious mistake. He never passed any further examination at all. He merely got a certificate from the professor with whom he was reading that he had attained a certain proficiency in mathematics, and on that he was allowed to join without any further examination.

Such is the result of the defendant’s statements as to his preparation for the army, and it is for you to judge whether or not the account he has given of it is such as you would have expected from Roger Tichborne, making allowance for the time which had elapsed

between the period in question and the time when the defendant was examined on the last trial. That concludes that intermediate stage of preparation for the army ; but before I pass away from this period I must advert to a circumstance connected with it, which I must say appears to me to be perhaps the most striking fact of all. You will recollect that the application for a commission for Roger was made to Lord Fitzroy Somerset, and that at the close of the year 1848 Mr. Seymour took him to the Horse Guards, and introduced him personally to Lord Fitzroy Somerset. You will remember also that when the commission did not come as soon as was expected, Roger took the bold step of writing himself personally to Lord Fitzroy Somerset, a thing that perhaps few young men would have ventured to do, but instead of it would have asked their relations, persons of position and rank, to write in their behalf. Roger wrote himself, and he got an answer from Lord Fitzroy Somerset direct, telling him he should have his commission, which letter he, as we know, acknowledged. Now the defendant was asked whether he had ever anything to do with Lord Fitzroy Somerset, and his answers are certainly remarkable. “ Did you ever have anything to do with Lord Fitzroy Somerset?—Fitzroy Somerset? no, I think not. Q. Who was he?—I do not know I am sure ; I suppose he would be some relative of the Duke of Somerset. Q. Some relative of the Duke of Somerset?—I do not know that is so.” Well, anybody at all acquainted with persons of that class, or who has been at all in the world, would know perfectly well that Lord Fitzroy Somerset, or Lord anything Somerset, would be a relation—son or brother—of the Duke of Beaufort; and that, while the family name of the Duke of Beaufort is Somerset, the family name of the Duke of Somerset is Seymour, or as they now write it, St. Maur. I can, however, quite understand that a young man who on entering the army passed the first three years of his life in Ireland, and then went abroad, and who was not moving in English society, might not be aware of the distinction between those family names; therefore I pass over that as a comparatively unimportant fact. But when the defendant is asked twice over, “ Had you ever anything to do with him?” and he answers, “ I think not. Q. You do not know who he was?—I have no recollection of him;” is it possible to reconcile that with the fact of Roger having been taken to the Horse Guards and there personally introduced to Lord Fitzroy Somerset, having himself addressed Lord Fitzroy Somerset in order to get his commission, and having got the commission from him in an answer under Lord Fitzroy Somerset’s own hand? But it does not rest there. Lord Fitzroy Somerset was, as we all know, an old and most distinguished officer, who had served throughout the Duke of Wellington’s campaigns as military secretary, and who was attached to him for years. When the duke died, partly as a proper

reward for his own distinguished services, and partly out of compliment to the memory of his deceased great chief, Lord Fitzroy Somerset was raised to the peerage as Lord Raglan; and that fact must have been known throughout the whole British army. One may safely say that there was no man in the army, from one end of her Majesty's dominions to the other, who when mention was made of the fact that this distinguished and gallant officer had thus received his well-merited reward at the hands of the sovereign, did not rejoice that Lord Fitzroy Somerset should have received his advancement to the peerage, which he so well deserved. Roger Tichborne was at that time in the Carabineers, and must have heard the elevation of Lord Raglan spoken of in the regiment, as a matter of military information and interest. Nor was the memory of Lord Raglan, as he then became, suffered to slumber. He had the command of the army in the Crimean campaign; and although the defendant was in the bush in Australia at that time, I take it there was no station, or any other aggregation of Englishmen, even round a camp fire, where the Crimean war was not spoken of, and where in the memory of former soldiers the name of Lord Raglan as associated with his former name of Lord Fitzroy Somerset would not be recalled. Looking to all these circumstances, you must ask yourselves whether it is possible that any one who had been in communication with Lord Fitzroy Somerset about his commission, and had received his commission from him, and who had been in the service three years afterwards, could have the memory and name of the man with whom he had thus been brought into communication, and whose name was so well known in the army, so utterly effaced that he could neither tell who he was, nor recollect that he had ever had anything to do with him? This is a matter which, I think, is well deserving of your consideration.

Connected with this period there is a circumstance not unworthy of mention. During his stay in town, when reading mathematics after his failure at Sandhurst, Roger Tichborne became a member of the Alfred Club in Albemarle Street. The club has ceased to exist, and its books were not forthcoming. A list of its members was tendered in evidence, but, not being authenticated, it could not be received. But Mr. Mansfield, who was himself a member of the club, and who had made the acquaintance of Roger during his visit at Bilton Grange, tells us that, going, one day, into the club in the summer of 1849, to his surprise, he found Roger there, and learned from him that he had become a member of the club, and they lunched there together. Of this Mr. Mansfield said he had a vivid recollection, and there seems no reason to doubt the accuracy of his statement, or to doubt the fact of Roger having been a member of the club.

Now the defendant, on his cross-examination, was asked whether,



when in England, he had belonged to any clubs in London, which he answered by saying that he had belonged to the Army and Navy Club; and that his name had been put up at the Traveller's he "thinks before he went away," which was a mistake, as we find Roger writing from South America, requesting Mr. Seymour to put his name up at the Traveller's. Being asked whether he had belonged to any other club, he answers "No, to no other." The question is then specifically put, "Did you ever belong to the Alfred?" and he answers, "The Alfred? No." You must judge whether a man could be a member of a London club, like the Alfred, and visit it, and so entirely forget it, that even an inquiry as to the fact should fail to recall it to his recollection.

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## ONE HUNDRED AND EIGHTY-FIFTH DAY.

*Tuesday, February 24, 1874.*

THE LORD CHIEF JUSTICE: Gentlemen, it occurs to me that before I proceed to deal with the defendant's recollection of his military life there is one subject which I ought to mention, and that is his visit to Knoyle in the autumn of 1849; it is connected with one or two rather important questions. In the first place, it may be convenient here to consider the defendant's knowledge as to the relations of Roger Tichborne with the Seymour family. As to this we know perfectly well that the relationship was never formally and ostensibly acknowledged. That we know from all the members of the Seymour family, and I do not suppose any one has the shadow of a doubt about it. But when the defendant is interrogated on the subject, his statement does not seem to coincide with that state of things. He was asked on cross-examination how he called his aunts; whether he called them his aunts or not: "What did you call them when you spoke of them—Jane and Helen, or Miss Jane, or Miss Helen Seymour, or Aunt Seymour, or Aunt Helen Seymour, or what?—I should think Aunt Helen; I have no recollection; probably it would be so; except Mrs. Bouverie: we called her Aunt Bouverie. Q. All except Mrs. Bouverie, and what would you call her?—I really don't remember, but I do not think I called her by her christian name." He gets into the same difficulty with reference to the uncles. The SOLICITOR-GENERAL: "If you wanted to draw their attention how would you address them?—To the best of my recollection, at times I might say Uncle Henry, at other times I might say Henry. Q. Will you swear that?—I do not see any objection to swearing it. Q. Will you?—I will swear to the best of my recollection it is so;

what more do you want me to do? *Q.* You will not say ‘yes’ positively?—God forbid; I do not want to commit myself if I know it. Let there be no mistake about it. Talking to a person for an hour you would never use their names at all. *Q.* That is not what I mean; but when you had occasion to begin a conversation, to draw their attention, how would you address them? That is what I want to know. You say, ‘sometimes Henry and Alfred, and sometimes Uncle Henry and Uncle Alfred, to the best of your recollection?’—Yes.” That certainly is in strong contradiction to the evidence of all the members of that family, and, I think we must take it, is altogether contrary to the fact. So with reference to the letter he addresses to Mr. Henry Seymour, in which he calls him his uncle Henry, when cross-examined on the subject, he says it is his firm belief he has frequently addressed him as his uncle in letters, but he will not swear it. But it is equally certain that in all the letters we have—and we have many—Roger Tichborne did not address Mr. Seymour so. The same inquiry occurs afterwards with reference to the grandfather, as to whether he ever called him “grandfather,” and his answer is that he does not think he ever addressed him as “grandfather,” but that he spoke of him as such to other people. All the evidence is directly contrary to that; and certainly in his letters to his mother Roger speaks of him as Mr. Seymour, and never as his grandfather or relation.

With reference to this visit to Knoyle, which occurred at the period I am upon, the defendant was asked two or three important questions. In the first place he is asked if he was ever there with his father. “Were you ever there with Sir James Tichborne?” And he answers, “I think not.” Now, we know that on this visit he joined his father there. We have his letters; his father was at Knoyle and he joined him there. Mr. Seymour, the grandfather, was not there; he was then at Bath and died there. He was known at that time to be dying. The defendant was next asked whether he ever went over to Bath to see his grandfather, who was at that time dying. We know that Mr. Seymour died on the 27th of November of that year, the visit of Roger to Knoyle having been in September. The defendant is asked whether he saw Mr. Seymour just before his death. He asks, “What do you mean by ‘just’?” The SOLICITOR-GENERAL: I mean in his last illness; I can’t fix the hour. Did you see him in his last illness?—I think I saw him in September of that year.” He is here right as to the date. “*Q.* Where was it that you saw him? in his bed-room, or when he was downstairs, or where did you see him?—I do not think he was confined to his bed then. *Q.* You do not think he was confined to his bed when you saw him?—I have no recollection of his being confined to his bed. *Q.* Are you prepared to swear that you did not

see him the last time in his bed-room, propped up with pillows?—No, I would not swear it. *Q.* But have you any recollection of the last time you saw your grandfather? Did you go for the purpose of seeing him, do you remember?—Yes, of course; most undoubtedly I went for the purpose of seeing him. *Q.* I mean he was known to be dying, was not he?—No, I think not. *Q.* Is your recollection that he was not known to be dying?—I think not. *Q.* What I want to know is whether you can swear that you did go to see your grandfather in an illness which all his family knew to be his last illness—knew him to be fatally ill—and whether you did not go to see him in that last illness. You know there are miracles; of course he might have recovered, but there is such a thing as a man being known to be hopelessly ill. Now, what I want to know is did you go to see your grandfather under those conditions?—Well, I have no recollection that he was so dangerously ill as what you talk about. *Q.* Is your recollection then that he died of a quick illness—that he was only ill a short time, or that he had a long, lingering illness for many months? Which is your recollection?—Well, I think it did last some time. *Q.* Two days are some time?—No, no; I am speaking of longer than that. *Q.* What I have asked you is, have you any recollection that you can tell the Jury of the last illness of your grandfather, Mr. Seymour, and when you last saw him, whether it was downstairs, or upstairs, or walking, or in a carriage, or how?—The last time I saw him, I don't think he was propped up with pillows as you say. I think if such was the case my memory could not fail to do so. Then again I don't think he was so seriously ill as you talk about when I went to see him, otherwise I should not have taken the horse down as I did." Then some questions are asked about taking a horse down. "*Q.* Then how long did you stay at Knoyle?—Not more than four or five days, I think, if I remember right." We know, by Roger's letters, he stayed from the 2nd to the 15th of October. "*Q.* Did you bid your grandfather adieu? did you bid him good-bye? Did you leave him thinking you should not see him again?—No, I think not. *Q.* You never did see him again?—I never did see him again. *Q.* Did he die shortly after you saw him?—I don't remember how long, really; I think it was some two or three months. *Q.* He lingered on at Knoyle, and then died, did he?—He died at Knoyle, I think. *Q.* Do you really mean to say you cannot recollect whereabouts it was you saw him? Do you mean really when you went down this time to see him, you did not understand you were going to see your grandfather for the last time?—No, I think not. *Q.* Was he much as usual when you last saw him, or was he ill at all?—I think, to the best of my recollection, he was not well. *Q.* He was not well, but nothing alarming about him? You did not go, I mean, to pay him a farewell visit?—No,



I think, now, you are trying to mislead me again. I believe I did go to pay him a farewell visit. Q. I understood you the contrary?—It was a farewell visit before I went to Ireland. Q. But I did not mean to catch you in that way. You are very ——?—You see I have to be. Q. Well, you are, whether you have to be or not; but I mean did you go and pay him a farewell visit on account of his life being near its close? That is what I meant, and, I think, you understood me to mean?—Then I don't think it was so. Q. You say he was rather ill? Was he at and about the place, as usual, when you saw him last?—No; I think not. Q. What was he? Where was he? What condition was he in when you saw him?—I don't think he was confined to his bed. I have no distinct recollection of it. Q. Would it surprise you to find that he did not die at Knoyle at all; that you were at Knoyle—or Roger Tichborne was—during his last illness: and that you went over, or Roger Tichborne went over, from Knoyle to Bath, to Mrs. Hopkinson's house at Bath, where Mr. Seymour was lying dying, and saw him there, and that in Mrs. Hopkinson's house he died about a month afterwards?—I deny that being the case." Now, there is no doubt that was the case. Mr. Seymour, we know, had gone to Bath to Mrs. Hopkinson's house, in order to have the superior medical advice which Bath afforded. Roger went over to see his grandfather, not probably to take a farewell leave of him as dying, but because he was about to go to Ireland and in all human probability would never see him alive again. Mr. Alfred Seymour tells us that his father had gone to Mrs. Hopkinson's house to have the benefit of medical advice at Bath; that he used from time to time to go over from Knoyle to Bath to see his father; that it was known to be a fatal illness, and it was understood to be a mere question of weeks; and he remembers perfectly well that the object of Roger's visit was to take leave of him, and he remembers it being a topic of conversation between them. He says, "My father's state of health was such that a period had to be chosen when he was able to see him; he could not see him any day; some days he was so bad that Roger's presence with him would have been useless. I was constantly backwards and forwards between Knoyle and Bath, which are twenty-seven miles apart; I used to drive over one day and back the next; and as far as my recollection goes I drove over from Bath one day, when my father was better, and I told Roger to go from Knoyle the next day to Bath, and see my father and take leave of him, because he was well enough to recognize him and to talk to him then, and it was hoped that he would be so to the time of his arrival. As far as my recollection goes, it was a question of taking a final farewell of him in this world, and choosing a day to do it." The witness Hewitt, who had been Mrs. Hopkinson's servant, denied for a time that

Roger had gone over to Bath, but afterwards admitted that he was mistaken as to that. Lady Rawlinson remembers the fact of his coming perfectly. She was at Bath with her father. She is asked, "Were you present at the interview between your father and Roger, do you remember?—I cannot recall the interview to my mind.

*Q.* You can tell me, at all events, was it intended as an interview, as a final leave-taking?—Certainly. *Q.* Was it known at that time

that your father was dying?—Yes. *Q.* No hope of his recovering?—No hope of his recovering at all. *Mr. HAWKINS:* He was at the house of Mrs. Hopkinson, I think?—Yes. *Q.* Was that the object of

Roger's visit to Bath at that time?—Yes. *Q.* The sole object of his visit?—Yes, to see my father. *Q.* And to take leave of him?

*Dr. KENEALY:* She has not said that. *Mr. HAWKINS:* Is that the case?—I believe I said Roger's object was to see my father.

*Q.* And was it also the object to take leave of him?—Yes, it was two leave-takings; Roger was going into the army, and my father was dying; therefore there were two reasons." Then I said, "The real question is, did Roger at that time know he was taking leave of Mr. Seymour, his grandfather, without any hope of ever seeing him again?" And the answer is, "Certainly, my Lord." That is how the evidence stands on that point; and the question is, as I have before said, whether when a man goes to see a relation under such circumstances, and knows, as Roger—if the evidence does not deceive us—did know, that he shall see him no more, that is likely ever afterwards to be effaced from his mind? Furthermore, besides forgetting that his last visit to his grandfather was a visit to a dying man, having gone over to Bath to take this leave of his dying relative, could he be so far mistaken as to imagine that the grandfather died at Knoyle, and have totally forgotten the fact of going to Bath to take leave of him?

There is also a question connected with the visits to Knoyle relative to the old lady, Mrs. Hopkinson, Mrs. Seymour's mother. The defendant is asked about her: "You have told me of the father, and mother, and the two sons, and the three daughters; was there, besides these, a regular resident at Knoyle, whom you used to meet there, staying there a long time together?—There used to be friends come there. *Q.* But don't you recollect anybody else who was there, I mean a long time together; whom you generally met there?—No." Afterwards the question is directly put, "Who was Mrs. Hopkinson?—Mrs. Hopkinson? *Q.* Yes?—I don't recollect the name of Mrs. Hopkinson at all. *Q.* Did you know Mrs. Hopkinson?—I know a Mrs. Hopkinson, but not the one you mean. *Q.* In connection with Knoyle?—No, I think not. *Q.* You would know that well enough—whether there was a Mrs. Hopkinson at Knoyle or not?—There might be; I don't recollect her at the moment. *Q.* A lady who

lived there? You don't recollect her? A lady who lived there; a Mrs. Hopkinson?—At Knoyle? *Q.* At Knoyle; do you recollect such a person?—No, I do not under that name. *Q.* Would it surprise you to find that Mrs. Hopkinson was Mrs. Seymour's mother; that she was regularly resident at Knoyle, when she was not living at her own house at Bath; and that she was the constant companion of Roger Charles Tichborne"—there, I think, the Solicitor-General went too far—"and that Roger Charles Tichborne was on intimate and affectionate terms with her—would that surprise you?—No; now you speak of the old lady I remember who you mean. *Q.* Now you remember?—Now you speak of her; and I hope the jury will believe none of the rest of it until you prove it—the rest of what you said—until you prove it to be true. *Q.* Well, is that true, the rest of it?—No; not that she was a constant companion of mine. *Q.* What is not true?—It is not true that she was a constant companion of mine, as all the rest. *Q.* What rest?—It is not true that I went to Bath. *Q.* Is it true that she was Mrs. Seymour's mother?—Yes; I believe she was Mrs. Seymour's mother." The last part of the answer had reference to the former question as to his having gone to Bath to see Mr. Seymour. Here again he positively denies having done so. Mrs. Hopkinson, we know, was Mr. Seymour's mother. She was always at Knoyle when the family were there, and at her own house at Bath when the family were not at Knoyle. Roger had been acquainted with her from a very early period, because his father, Mr. James Tichborne, always called on the old lady when he was in that part of the country, and seems to have taken his sons with him to see her; and in one of his letters he mentions how kind she always was both to him and his sons. The defendant had no recollection of her till the Solicitor-General had told him distinctly who she was. Then he says, "Now you speak of the old lady, I know who you mean."

Another thing connected with Knoyle was the smoking in the butler's cottage. It appears that the butler lived in a cottage opposite the house, and in part of that cottage Mr. Alfred Seymour had a large upper room, and as old Mr. Seymour had a great dislike to smoking in the house, and Roger was an inveterate smoker, he used to go, when at Knoyle, to Alfred's room in the butler's cottage, and there smoke, and also practise on the French horn, which Mr. Seymour would not allow in the house. The butler was named Thompson, and when he afterwards left Mr. Seymour's service he took a house in St. James's Place, and there let apartments, and Roger Tichborne when he came to London always went to Thompson's apartments, if the Seymours were not in town. He therefore, of course, knew Thompson familiarly and well. The defendant is asked,



in cross-examination, "Who was the butler at Knoyle when you used to go there?—I do not recollect his name. Q. You do not recollect the name of the butler at Knoyle? Where did he live? Where was his room at Knoyle?—I do not remember. Q. You do not recollect the butler's room?—I do not know I should. Q. You do not recollect where the butler's room was?—No, I do not. Q. Did you ever go into his room? Did you know much of the butler? You have forgotten his name, but did you know much of him?—Probably I should know him very well. Q. But I mean had you anything to do with him—anything particular to do with him when you went to Knoyle?—No doubt I should know him very well when I was there. Q. Of course you would know the butler, whether he was in your grandfather's house, or whether he was in the house where you were staying? Do you recollect ever doing anything in his room? You used to go there?—I was rather fond of making the acquaintance of such people, but I do not recollect anything particular. Q. There is no more that you can recollect about the butler at Knoyle?—There might be a great deal more which I really cannot bring to my mind at the moment. Q. Of course there might; I am asking you whether there was? There might, or might not?—I cannot undertake to tell everything that happened to me during my life. Q. I do not expect you to?—You just ask me to remember things I do not remember." Perhaps so far the cross-examination may not have sufficiently directed the defendant's attention to the cottage, and his having smoked there; but then he is asked further, what one would have thought would have brought the past back to his memory, had it ever been present to his mind, "I ask you about the butler at Knoyle; very well, you cannot tell me. How old was Mr. Seymour when he died?—I really do not know. Q. About—a man well on in life?—Certainly he was. Q. Was he a great smoker?—I do not think he used to smoke at all. Q. Is that your recollection, that he used not to smoke at all?—I think not. Q. You think not: did he not smoke at all? I should have thought you could have remembered; did he smoke or not? Was he a great smoker?—I am under the impression he did not. Q. Can you tell me whether your grandfather at Knoyle, where you used to be for a month at a time, was a great smoker or not, or whether he did not smoke at all? Is it your impression he did not smoke at all?—Yes. Q. Is that your impression?—Yes, that is my impression. Q. Cannot you say more than your impression of your own grandfather at Knoyle?—I do not see that I can revive my memory up to the present moment. Q. Surely?—I can assure you I find very great difficulty in it. Q. Your grandfather did not die until 1849. Surely you can tell me whether he was a man who never smoked, or whether he was a great and continual smoker?—To the best of my recollection he did

not smoke. *Q.* Or perhaps he may have been an occasional smoker? —He may have been an occasional smoker; if he was, I do not remember." It seems strange he should have forgotten that Mr. Seymour detested smoking, and that in consequence he went to the cottage to smoke. And it certainly is a remarkable thing that he should not have recollected the butler's name, especially as afterwards he was constantly in the habit of going to the man's house in London, and lodging in his apartments.

Then with reference to this part of the case, a photograph of Knoyle was shown to him, which was stated by Mr. Alfred Seymour, the occupier of the house, to be a correct representation of the front of Knoyle, at least of the front which looks to the public road; and opposite to it is the butler's cottage; and in that photograph there is further exhibited the window of the room in which Roger used to sleep when he was at Knoyle; and this photograph seems to afford a very distinct representation of the exterior of the house. It is shown to the defendant on cross-examination, and he knows nothing about it; he does not recognise Knoyle in it, or know what it represents. For four successive years Roger Tichborne spent a portion of his vacation each year at Knoyle, and you must judge for yourselves whether, after that, a man would not at any period of his life, on being shown a photographic representation of the house, know it again.

There is one more circumstance connected with the visit to Knoyle, and that is his shooting there. The defendant was asked on cross-examination whether he had ever shot at Knoyle; and his answer was that he had no recollection of having shot there; certainly not of having had a regular day's shooting there. "*Did you use to shoot at Knoyle?—No. Q.* Did you ever shoot at Knoyle?—Do you mean regular shooting in season? *Q.* I do?—No, I do not think I have; I do not recollect. *Q.* Do you really mean you never shot at Knoyle?—I might have shot, but never a regular day's shooting. *Q.* That you are confident about, are you?—I have no recollection of it, of going out shooting at Knoyle. I might have gone out a day or so. *Q.* You are sure of that, that in the season you never shot at Knoyle?—I have no recollection of it." Now the letters of Roger show that he did go out shooting while he was there; twice he writes from Knoyle that the birds are so very wild that he has had no sport. What makes it the more remarkable is that Hewitt, who was called on behalf of the defendant, and Baker, the groom, both speak of his spending hours and days out shooting at Knoyle; and then we have the very striking fact that this having been opened to him at the late trial—a question having been made there about his having shot at Knoyle—when the defendant sees Hewitt after the trial—I think as late as 1872—he perfectly recollects shooting at Knoyle; and not only that, but the colour of the dogs

over which he shot. In like manner, whereas on the cross-examination he did not know the butler of Knoyle or the man's name, when he sees Hewitt he recollects perfectly all about Thompson the butler, about going to smoke at his cottage, and about Thompson going out shooting, and that Thompson was a one-eyed man, and consequently had to handle his gun in a different way from what other people do. Thus, we have the defendant's memory and knowledge wholly at fault on subjects when first put to him as to which his exhibition of memory at a later period convinces persons of his identity.

I pass on to the life in the army; and we recollect that Roger Tichborne started for Ireland and arrived at Kingstown on the 25th of October; he had leave of absence till the 28th, but he joined on the 27th. The defendant, as you will see, gives a different account of it. But there can be no doubt that Roger did join on the 27th, because he writes so in express terms to his mother. He tells her he joined on the 27th, specifying the date. We know from what Colonel Bickerstaffe told us, that he came in plain clothes to Colonel Jackson's quarters; that he knocked at the door, and was let in; that from his appearance the Colonel did not suppose that he was come to join as an officer, but was come to assist the cook, the regiment being about to give a dinner, and desired that he should be taken to the cook. It was only when Roger produced his letter from the Horse Guards that the Colonel handed him over to Colonel Bickerstaffe, who was then adjutant, to be introduced to his brother officers, after which Mr. Foster took him about and introduced him to the different officers, and also to the tradesmen of the regiment. On his cross-examination, the defendant is asked: "Do you recollect when you arrived in Ireland on the 25th or 27th, whether you joined your regiment the very next day?—No, I did not. Q. How long were you in Dublin before joining?—About four or five days, I think." I have no hesitation in saying that that is incorrect. Roger arrived at Kingstown on the 25th, at Dublin on the 26th, and joined on the 27th. Q. "Whereabouts was the regiment at that time?—At Portobello. Q. Who received you?—I do not know; I was up there dining a night or two previous to that, but I do not know who received me. Q. You were with them a night or two previous, but you do not remember who received you?—No. Q. What I mean is whom did you first see?—I never did join a regiment, and don't know. What did you go through? what was the process? whom did you see when you formally joined?—I do not remember, I am sure. Q. Who was the colonel at the time when you joined?—Sir Thomas Hawker, I think. Q. I do not mean the full colonel?—Colonel Jackson. Q. When did you see him first, do you remember?—I do not remember when I first saw him. Q. Do you remember who



was with him when you first saw him?—I do not remember at the present moment when I did first see him. *Q.* I thought you might remember who was with him?—No.” Then comes an inquiry as to whether he appeared before the colonel in uniform or plain clothes. You heard Colonel Bickerstaffe’s account of it: “Were you in full uniform, or how?—I do not remember when I did meet him. *Q.* Had you got your regimentals with you?—No, they were not made. *Q.* Were they made in Ireland?—Yes, some of them. *Q.* What was made in Ireland, and what had you taken with you? I suppose by that you mean that some were made here?—Yes, there were some made here; some of the accoutrements were made here. *Q.* By that you mean your horse’s furniture?—Yes, and also some of my own. *Q.* Some of your own were made here, were they, in this country?—Yes. *Q.* Some in this country and some in Ireland?—Yes. *Q.* You mean you had not got your full regimentals when you first joined, so that you could not have gone to the Colonel?—No, I did not say so; I told you I was several days before I joined. I was waiting then while my regimentals were being made.” We have here a double mistake. We know from his letters that he arrived in Dublin on the 26th of October, and joined on the 27th. You know we had evidence before us that Roger was at Knoyle, previously to his leaving for Ireland, when the new uniform came down, and he was asked to put it on, and he came down to dinner in it. He did the same thing at Tichborne afterwards. Then the question goes on: “Did you go to the colonel in full regimentals when you first presented yourself to him?—There is no doubt I did, but I do not remember the occasion. I have been trying to think when I first met him, but I do not recollect at the moment.” Again I can only refer you to the evidence of Colonel Bickerstaffe on that subject. “Do you recollect anything at all that passed between the colonel and yourself when you joined?—No. *Q.* Nothing that you can recollect?—No, I do not recollect the first of the colonel. *Q.* Please to understand again that I am not speaking of the first meeting with the colonel; that may have been, for aught I know, at Upton, Bath, Tichborne, or in the streets of London or Dublin, but when you first presented yourself to your commanding-officer?—Yes, I think to the best of my recollection I was first introduced to him by Captain Jones, or Major Hay; I do not recollect which; one of the two. *Q.* But you cannot recollect anything that passed?—No, I cannot recollect anything that passed. *Q.* Do you remember the colonel sending you anywhere?—No, I do not. *Q.* Who was the adjutant?—Bickerstaffe, I think. *Q.* Did anything pass with him?—How do you mean pass with him? *Q.* Do you remember any incident—anything happening with Bickerstaffe—anything he said or did to you?—Dear me, I do not remember

the conversation with him, I am sure. *Q.* Was Foster the major at that time, or what?—No. *Q.* What was he at that time—captain or lieutenant?—Captain.” That is a mistake, he was lieutenant. *Q.* “Was he an officer in the regiment at that time?—Yes. *Q.* Do you remember anything done by you and him together on the occasion of your joining the regiment?—There is only one thing I remember, and that is, I was attached to his troop.” That again is a total mistake; he was attached to the troop of Captain Jocelyn, as that officer has told us. The defendant continues: “I was attached to his troop, and I was afterwards attached to the A troop instead of his; I do not know whether that is what you are alluding to. *Q.* No, it is not what I am alluding to, but suggesting whether you can recollect anything you and he did together on the occasion of your joining—the same day as you joined. Do you recollect?—No, I cannot say that I do. I have some idea it was Captain Foster who introduced me to the colonel.” We have here a series of mistakes. He was not introduced by Major Jones or Major Hay, or by Captain Foster; he presented himself, as we know. In the second place he was not in uniform, but was in clothes so mean-looking as to attract the attention of Colonel Bickerstaffe. He was not attached to Captain Foster’s troop, Mr. Foster not being then a captain at all, but only a lieutenant during the time Roger was in the regiment. His uniform was not made in Dublin, but in London; he had not to wait till it was made, to join.

He is next asked where he first began to drill, and the answer is correct, “At Portobello barracks. *Q.* Who drilled you?—Different sergeants. *Q.* Do you remember the names of any of them?—Yes, the names of most of them. *Q.* You remember the names of most of them?—Yes. *Q.* Who were they?—Cairns was in the riding school. *Q.* Was he a sergeant?—Yes. *Q.* Sergeant Cairns?—Sandy Cairns, they called him, the one I was speaking of. There were three brothers of the Cairns’s—Sandy, Robert, and James—and they were all in the riding school at different times. *Q.* Were they all sergeants?—At different times. *Q.* At different times they were sergeants, but not all at the same time?—No, I think not.” It would have been more satisfactory, I think, if he had given the names of some of the others, as Sergeant Cairns was one of the active supporters of the defendant, and went about the country for him. Then he is asked how long he remained at Portobello, and he says from seven to eight months, when, in point of fact, he was there only five. However, that is of no great importance. He is then asked, “Where were your rooms in the barracks?—Round to the right, on the right hand side of the barracks. *Q.* Can you give me any other description of it?—Well, I hardly know how to describe it to you. *Q.* Was it on the ground floor? I do not know Portobello barracks?”

—It was over the stables at Portobello.” That appears to have been right. Then he is asked who the commander-in-chief was. He says “the Lord Lieutenant.” Well, in one sense the Queen is the head of the army, and in one sense the Lord Lieutenant would be the head of the army in Ireland; but I take it a military man would not understand by the commander-in-chief in Ireland the Lord Lieutenant. However, that is his answer.

Next comes a good deal of inquiry with reference to Dublin society, and there are some of the answers of the defendant that are worthy of attention. He says he went to the Castle. He is asked where the Castle is, and says it is in the St. James’s district. According to Mr. Burke it is in St. Wulburgh’s parish, and there is not a street or district called St. James’s Street, or St. James’s district; there is a James Street, but it is nearly half a mile from the Castle. He is asked what he went to the Castle for, and he says to be present at a levée which was held there; but he omits all mention of two drawing-rooms which Roger Tichborne attended, and which are referred to in his letter to Mr. Danby Seymour, of March 17th, 1852, in which he says, “I went to the first levée, and to the two drawing-rooms.” There is, therefore, no doubt Roger did go to a levée, as the defendant says, but that could easily have been known. But then the defendant knows but of one levée; and when he is asked what the attending at the levée was for, he says it was on his promotion to his lieutenantancy, in which case it could not have been until the return of the regiment to Dublin in 1852, which would be the second levée Roger attended. He knows nothing of the drawing-room which Roger attended on that occasion, the second time he was in Dublin, and at which drawing-room there happened that very unpleasant occurrence of which he has given a very graphic but by no means agreeable description. The defendant is asked: “You said you had been to a levée: were you ever at a drawing-room of the Lord Lieutenant’s?—Well, perhaps a drawing-room and a levée mean one thing with you. *Q.* I ask you whether you went to a drawing-room: I do not mean the same thing by them. Did you ever go to a drawing-room?—I cannot say. *Q.* Do they mean the same thing with you?—Well, I have only been to one; I cannot say which it was, whether a drawing-room or a levée. It was on my second visit to Dublin, and it was on account of my lieutenantancy.” There is here a serious mistake. We know from Roger’s letters that he went to a levée and two drawing-rooms on first being at Dublin; and that the second time of being there he went to a levée again on his promotion to his lieutenantancy, and also to another drawing-room. So that there were three drawing-rooms and a second levée, neither of which the defendant knows of.

The defendant is further asked as to Dublin society: “Did you



go much into society in Dublin?—No, not very much. *Q.* Did you at all?—I used to go occasionally to a ball. *Q.* Where?—Different places where the balls have been held. *Q.* I suppose you went to the balls where the balls were held; what I want to know is where the balls were held?—There were one or two balls held at the Castle, and one or two private balls I went to. *Q.* The balls were at the Castle, and the levées as well were there?—There were balls at the Castle. *Q.* To which you went?—Yes. *Q.* And private balls?—I did not say private balls; I suppose so. *Q.* I thought you said so?—Yes, I thought you were alluding to the Castle. *Q.* Private balls where? Give me the name of any private gentleman where you went to a ball in Dublin?—I do not remember the names now. *Q.* Did you dine out anywhere in Dublin?—Yes, I dined out a good many times: that is what I meant by going into society. *Q.* Did you dine out in Dublin?—Yes, I did. *Q.* Where?—I do not remember where. *Q.* You cannot remember where?—No. *Q.* Cannot you give me the name of any gentleman?—No, I do not think I have any right to tell you where I have dined; it has nothing whatever to do with the case. *Q.* I am afraid I must ask you to tax your memory, if you can give me the name of any gentlemen with whom you have dined?—I do not remember. *Q.* Not one?—Not one. *Q.* Or lady?—You are sure to get that. *Q.* Eh?—No, I do not remember any. *Q.* Did you make any acquaintances amongst the ladies and gentlemen in Dublin?—I dare say I did when I was there; I do not remember. *Q.* Can you mention any one that you formed an acquaintance with?—No. *Q.* Not one gentleman with whom you formed an acquaintance in Dublin?—No.”

He is further asked about what people he had known, and then he says: “A lot of people; it is quite impossible to tax my memory. There was a Mr. Burke and a Mr. Reece. *Q.* Who is Mr. Burke?—Why, he is Mr. Burke, I suppose. *Q.* What was he?—I am sure I do not know; a gentleman I suppose. *Q.* You do not know what his occupation was?—No. *Q.* What happened to you with Mr. Burke?—What happened? *Q.* Yes; you say you knew him; did you ride with him, drive with him, or walk with him, or what?—Yes, I believe we have been out riding together. *Q.* You do not know anything of him? Riding together; anything else?—I believe we have been out together riding. *Q.* Can you tell me anything more about Mr. Burke?—I do not know what you want to know more about him. *Q.* I suppose the name of Burke is not a very uncommon name in Ireland. You cannot tell me anything more about him?—I do not know anything about his private affairs.” Now, Mr. Burke was a nephew of Ann, Lady Tichborne, that lady being a sister of his father, Sir John Burke. And besides that,

Mr. Burke states that Roger dined with him several times during his stay in Dublin. Mr. Burke was asked, "Were you living in Dublin in 1849?—Yes. Q. And did you see Roger Tichborne during his being quartered in Dublin in 1849 until he left for Cahir, and again in 1852, when he left for Canterbury?—Yes, and somewhat familiarly, but not intimately; he came several times to dine."

Later the defendant was asked as to a lady with whom Roger was connected, and who appears, according to Mr. Burke, to have shown him hospitality and kindness, namely, the Countess of Clanricarde, who was another of the sisters of Ann, Lady Tichborne. "Had you anything to do, at any time in your life with a Lady Clanricarde?—Yes, there was a Lady Clanricarde in Ireland. Q. Did you know her?—I believe I did; not very well though. Q. Where did you know her?—I think I met her at the Deases'. Q. Where did the Deases live?—They lived in Dublin. Q. You met Lady Clanricarde at the Deases', did you?—I think, to the best of my recollection, yes. Q. Will you swear you spoke to Lady Clanricarde in your life?—Yes, I will swear I have spoken to Lady Clanricarde. Q. Lady Clanricarde?—Yes. Q. At the Deases'?—I will not say at the Deases', but I know I have spoken to her. Q. Where?—In Ireland. Q. Where will you swear you ever spoke to Lady Clanricarde?—I cannot remember where it was; but I am under the belief it was at the Deases'. Q. Was she an old lady or a young lady?—She was not a very young lady whom I mean. Q. Was she a very old lady?—No, not a very old lady. Q. Middle-aged?—Middle-aged. Q. Who was Lady Clanricarde? Do you recollect anything about her?—I do not know what her family connections were"—She was the sister of Roger Tichborne's aunt. "Q. Did you know Lord Clanricarde or Sir Edward Clanricarde?—I do not know Sir Edward Clanricarde. Q. Did you know Lord Clanricarde?—Well, I cannot say that I did. Q. Did you?—I believe I did. Q. By sight?—Yes, but I have no distinct remembrance; therefore I will not speak of him. Q. Was he with Lady Clanricarde?—No; I do not think when I met Lady Clanricarde there was any one with her, not of the same name." Now this lady was a widow—we are speaking of 1850—her husband, Lord Clanricarde had died in 1808. She was a widow at that time, having her own house. Therefore, it being quite certain that her husband was dead, the defendant could not have seen a Lord Clanricarde, unless he is supposed to have referred to the present Marquis of Clanricarde. In one of Roger's letters to his aunt he mentions—as I daresay you recollect—his having dined with Lady Clanricarde, and he says "the party was rather small." You remember the trick which Lieutenant Foster played on him on that occasion, when he told him it was most likely that at Lady Clanricarde's, where Roger was going to dine for the

first time, he would meet some of the great people; probably the Duke of Cambridge would be there; and he must go in full uniform. He went accordingly, and when he got there he found no one but the old lady, with whom he dined tête-à-tête, and afterwards complained to Lieutenant Foster of the trick he had played on him. Mr. Burke was asked about this Lady Clanricarde and her kindness to Roger: "You know as a matter of fact that Lady Clanricarde was very civil to him?—Oh! remarkably, and was most anxious to cultivate him. She was extremely attached to her sister, and was very anxious to show to the Tichborne family every respect that she could, and she was a very hospitable person. Q. What aged lady was she at that time, about?—Something approaching to sixty I should say." Then Mr. Hawkins asked with reference to Roger, "Was he a young man who made himself popular?—He did in that family, because he was a polite, well-bred—I was going to say French—gentleman. I knew him to be English of course. Q. But for your knowing him to be an Englishman you would have taken him to be a French gentleman?—Oh, if I had met him travelling in a railway I should have put him down as a Frenchman. Q. It was at Lady Clanricarde's own house you met him, I presume?—At her own house. I must have met him there at least five or six times at dinner: I remember having done so. Q. At dinner?—At dinner, and it may have been oftener; because on looking at a diary of mine, I find that in about the time that would cover Roger Tichborne's stay in Dublin, I myself dined at Lady Clanricarde's thirty-six times. Mr. HAWKINS: You say Lady Clanricarde was desirous of showing him civility; did she intimate that to you?—Oh, yes, and was wishing for his coming, having heard from the family in England that he was coming to Ireland." The defendant was further asked about the Deases, at whose house, he said, he met Lady Clanricarde. It appears that the family did not live in Dublin at all, but only visited Dublin from time to time. The defendant says it was at their house he met Lady Clanricarde, ignoring the fact that he had dined at her house or had ever been there. Then he is asked about Lady Teresa Dease, who was the grandmother, I think, of the Major Dease who was here as a witness. "Did you know a Lady Teresa Dease?—Deeds. Q. D-e-a-s-e: I may have pronounced it wrong?—I believe I did know a lady in Dublin of the name of Dease; I did not know that she was a lady of title. Q. I am asking about Lady Teresa Dease; did you know her at all? Do you know who she is, to begin with?—I do not remember her; I remember the name. Q. Lady Teresa?—No, Dease. Q. I am asking about Lady Teresa Dease?—I think I knew a gentleman of that name also. Q. I am asking about Lady Teresa; you would not know a gentleman of that name?—I said Rees just now; that is what I meant to say. Q. I am asking



about Lady Teresa Dease; do you know anything about her?— I have some recollection of the name, but I do not recollect her. Q. Who was she, if you knew her?—If I did know her, I knew her in Dublin. Q. Who was she, do you know?—No, I do not. Q. Have you any recollection?—I have no recollection of the person you mean. Q. Did you know one of her sons at all?—I knew a gentleman of that name. Q. Whether he was a son of Lady Teresa Dease you do not know?—No, I do not.” Major Dease was called as a witness on this trial, and he tells us that his family did not live in Dublin at all; they lived in Westmeath, and only occasionally visited Dublin. Lady Teresa herself, I believe, did not live in Ireland, but at Richmond. The name must have been known to Roger at one time, because Lady Doughty, in one of her letters to Roger, speaks of Lady Teresa Dease as a person known to both, as well as of Mr. Dease, her son, and the young Deases. Major Dease is asked: “Were your family living in Dublin?—No, my family lived in Westmeath. Q. Then there was no member of your family living in Dublin?—No. Q. Do you know whether Roger Tichborne visited your family at all?—I do not think so: I think I may say not—not in Ireland.” That is confirmed, as I have already pointed out, by the evidence of Mr. Burke. Major Dease also says he saw a good deal of Roger in the winter of 1849-50. The witness was staying at Castle Bagot, the house of his uncle, Mr. Bagot, and Roger came frequently there to visit. He used to hunt with them, sometimes ride down in the morning and breakfast with them, then hunt, and then dine and go back at night, because he had to be back in barracks.

Now the question here is, whether what the defendant thus gives us as his recollection of Dublin society comes up at all to what you would expect of Roger, in respect of his Dublin associations. Roger in his letters speaks of knowing many persons in Dublin; he speaks of going to private balls; he speaks of going to a ball given by Sir Edward Blakeney on his farewell to the Dublin garrison; in a letter of May the 15th, 1852, when he was at Dublin the second time, he speaks of being at the St. Patrick's ball. He says in one of his letters he has been at balls and parties almost every day for three weeks; and he speaks of the gaiety of Dublin society, and how pleasant it was to him. The defendant's account of having been to one or two balls, and gone on one or two occasions into society seems hardly to come up to the account Roger gives of himself. His knowledge of the attendances at the Castle is very defective. His want of all knowledge of Lady Clanricarde is certainly very striking. So much for the stay at Dublin.

Then he is asked about visits in the neighbourhood during the time he was in Dublin, and he says he remembers visiting Howth

Castle. "How often?" and he says, "Not very often, I think; about three times in all, that I remember. Q. I do not know whether you remember, in any of your journeys to Howth, any particular way that you went there. Do you remember going by any particular route to Howth from Dublin?—I think I rode on two occasions. Q. You rode on two occasions?—And I went by boat on the other. Q. Was there anything that happened on that journey that you can remember now?—Yes; the boat capsized. Q. And what else? I did not catch your exact words?—Just before I landed." Then he is cross-examined as to Howth Castle, and where it is situated. He says, "It is nine to ten or eleven miles from Dublin. Q. What sort of place is Howth?—What sort of place is it? Q. Yes. Is it an old place, or a new, or what?—It is an old place. Q. I mean, is the house new or old?—It is an old house. Q. Where does it stand?—It stands on the opposite side of the bay to Kingstown, on a kind of a neck of land that goes out. Q. Whom did you go to see at Howth?—I went to see Lord St. Lawrence." Now there is no more reason why he should have gone to see Lord St. Lawrence than to see his mother, Lady Howth, to whom he had been introduced at Mrs. Washington Hibbert's in 1848. Lord St. Lawrence says he was not there: but Roger in a contemporaneous letter says he has been to see Lord and Lady Howth, their son, who was in the 7th Hussars, and the three daughters. Therefore I think Lord St. Lawrence must be wrong on that point. "Q. When did you first go to Howth?—Before I joined the regiment." That is contrary to Roger's letter to Lady Doughty announcing his arrival. He says in it that it was too late to go to Howth, and he gives an account later of his having been to Howth some little time after he joined the regiment. The defendant says Lord St. Lawrence was "a remote connection"—in fact Lady Howth was another sister of Ann, Lady Tichborne, who, we know, was Roger's aunt by marriage. The question arises, whether he knew anything about Howth until a late period, and after he had been once or twice questioned about it. In the first place Lord St. Lawrence tells us that when he saw him he tried him with reference to going to Howth, and asked him whether he remembered walking to Howth, and put the distance at two miles; and the defendant said he had walked with him, and assumed that as the distance; whereas the distance by land is some nine or ten miles. The learned counsel for the defendant complained of that as a trap laid by Lord St. Lawrence for the defendant, and a recourse to deception which was not justifiable. I never think myself that deception is commendable; but that is a matter to be settled between Lord St. Lawrence and the defendant. The question is, whether he really did give Lord St. Lawrence to believe that he accepted the distance

as so stated? Lord St. Lawrence says distinctly, "I cross-questioned him to the effect if he remembered walking from Dublin to Howth Castle with me, and if the distance was not about two miles. Dr. KENEALY: Can you give any reason at all why you should suggest a wrong distance, and a fact that never happened? Was it to entrap?—Well, I admit it was," says Lord St. Lawrence; and if it was a trap it would appear that the defendant fell into it. Then the defendant is asked by the Solicitor-General, "You say you will not be confident that Lord St. Lawrence did not ask you whether anything remarkable had happened. Did you remember anything remarkable happening on any occasion of your visits to Howth?—Yes, I remember. Q. What was it?—I remember falling off my horse into a ditch. I remember at another time a boat capsized me just as I was getting out round the point." The defendant was questioned by Mr. McEvoy also with reference to his visiting Howth, and Mr. McEvoy says he did not seem to remember anything about it. Mr. McEvoy on his cross-examination is asked what he tested him with; and he says, "I tested him on a story in reference to a visit he was supposed to have paid at Howth, and asked him if he knew Howth. He was some time before he answered, and at last he said, 'It is in Ireland,' and I said, 'Yes, it is in Ireland. Do you know anybody there?' and he did not answer it at all. He could not answer me apparently." Then Colonel Norbury, a witness for the defendant, says he also asked him about going to Howth, and how he went; and the defendant said he had ridden or driven, or gone by rail, he did not know which, but he said nothing to him about the boat, or the boat having capsized. So that it would appear that at the earlier period after his return to this country he had not the acquaintance with Howth which he exhibited at a subsequent period. Then with reference to his visits to Howth, there is this further circumstance. When asked about the daughters, the sisters of the present Lord St. Lawrence, he gives a strange answer. "Was there any other member of the family?—There was a sister"—In point of fact there were three sisters, Lord St. Lawrence expressly told us so—"Q. What was her name?—I cannot tell you; if I remember right she got married at the time I was in Dublin. Q. Do you remember what her name was—either her Christian or her surname?—Her Christian or her surname?—Q. Yes?—Her surname would be Howth, would not it?" Of course it would not be. The family name was St. Lawrence; and the ladies would be Lady Emily St. Lawrence, Lady Catherine St. Lawrence, and Lady Margaret St. Lawrence. Lady Doughty writes to Roger about Mr. Swinfen Berkeley, being at that time paying attentions to Lady Emily St. Lawrence, and Roger writes back about it, saying that he thought Mr. Berkeley's love was the love that hurries, but not that lasts, or something to that



effect, in French. So he knew the names of these ladies, and knew the distinction between the title of the peer and the family name; there being a clear distinction between the title of Howth and the family name of St. Lawrence. It would certainly seem strange to have Roger, who knew that perfectly, making such an answer as, "Her surname would be Howth, would it not?" He is asked what the lady's Christian name was?—"Upon my word I do not remember what her Christian name was. Q. Whether it was Mary or Elizabeth?—I could not say. Q. Should you know her well, this young lady? Was she a young lady? I mean was she younger than Lord St. Lawrence?—I do not know, I am sure. Q. Perhaps I ought not to ask?—No, I do not think you ought to ask that question. Q. I withdraw it. But did you know this lady?"—That is Lady Catherine, now Lady Catherine Wheble, who says she met Roger in Dublin, and used to dance with him at the Dublin balls. I suppose that is the only one to whom this answer can apply—"I met her on several occasions. To the best of my memory I met her somewhere else than at Lord Howth's, but I cannot say where."

With reference to other visits, he is asked on the examination-in-chief, "Did you go into any of the neighbouring counties?—Yes. Q. Where did you go to?—I used to go to Meath. Q. Do you remember meeting any one when you went to Meath?—I went with Mr. McEvoy. Q. Who was Mr. McEvoy?—He was one of the officers of the Carabineers then. Q. When you went with Mr. McEvoy to Meath, do you remember meeting any one—any ladies?—There were two ladies I met. Q. Who were the two ladies you met?—I think their name was French—The two Miss Frenches. Q. What was Mr. McEvoy at that time in the Carabineers?—He was a captain." That is a mistake; Mr. McEvoy never was captain. He left the regiment before he reached that grade. On cross-examination the subject is renewed; and he said he visited people out of Dublin. "I visited up at Meath." Now that is a curious answer, because there is no such place as Meath, though there is the county of Meath. "Do you mean that you went out to stay at Meath?—I went to Meath—yes. Q. Did you return the same night? or did you dine and sleep, or stay?—No, I think I returned the same night. Q. Whom did you visit in Meath?—Some friends of Mr. McEvoy's; I forget what the name was. Q. Friends of Mr. McEvoy's; you do not remember the name?—No. Q. Did you go with Mr. McEvoy, do you mean?—I have been with him to Meath." Mr. McEvoy, on being called, says there is no town called Meath, only the county. "Q. Is it true that Roger Tichborne used to go with you to Meath?—I have no recollection of his ever going there with me. Q. That is to say, ever going to the county with you?—Never, that I can recollect. Q. Were there any ladies of the name of

French that he met with you?—Never.” The defendant was also asked about having gone to Lord Bellew’s place, that is in the time of Lord Bellew’s father. “Were there any people you knew, or had met anywhere that you knew in Ireland, when you got there—were there any people whom you knew?—Yes, there were people whom I knew. Q. Who?—Now, you are going into who; there was a Mr. Bellew. Q. Was he any relation of Lord Bellew?—Yes, he was Lord Bellew’s son. Q. Is he alive?—I do not know, I am sure; I never ascertained. Q. Was he about your own age, or what?—Well, I do not think there was much difference. Q. Where had you known him?—He was at Stonyhurst. Q. About your own age?—I will not say that. Q. But about?—Yes. Q. A young man, was he?—Yes, a young man. Q. Where did you see him? Did you see him—perhaps I am assuming too much—that you saw him when you got to Ireland?—Yes, I did. Q. Where?—Both at Cahir and Dublin.” He is right as to Roger having met Lord Bellew at Dublin, but wrong as to Cahir, for Lord Bellew says he never was there in his life. The defendant also says that he met Charles de Brimont in Ireland. And it is the fact that Charles de Brimont was there in 1850, at the time Mr. James Tichborne and Roger came over to Dublin from Cahir. We know that from a letter of Mr. Tichborne to his wife, which letter is preserved, and we have it here, it having passed through the defendant’s hands; whether he read it or not of course I cannot say, but there is the letter.

On the 5th of April, 1850, the head quarters of the regiment were, as we know, changed from Dublin to Cahir, and detachments were sent to Limerick and Clonmel. Roger Tichborne was still attached to the F troop (Captain Jocelyn’s), but Captain Jocelyn’s troop being sent to Limerick, Roger, in order that his drill might not be impeded, was left at head-quarters at Cahir, and was attached to some other troop. It was whilst he was at Cahir that the unfortunate accident happened of the horse running away with his servant Clarke, and throwing him, which occasioned Clarke’s death; and it was at Cahir that the other accident took place—perhaps I am wrong in calling it an accident, as it was not attended with any ill result. Roger’s charger got his bridle loose, and ran away with him, rushed into the barrack square and leapt over a child without injuring it. Of course those occurrences were very well known in the regiment.

The defendant was asked how long he stayed at Cahir previous to going to Clonmel, and he answered about five or six months. That is clearly wrong. I do not know that much importance attaches to it, but Roger was there twelve months; he did not go to Clonmel till April, 1851. Then he is asked about the barracks, and where his room was; and he says his room was to the right, on the ground floor; and I presume that is right, because no attempt has been made

to contradict him. While at Cahir Roger obtained his lieutenancy, having been promoted on the 22nd of October, 1850, on a vacancy created in the regiment by Captain Jocelyn going on half-pay. He was asked with reference to his obtaining his lieutenancy: "Was there any change with respect to yourself? Did you get any promotion?—Yes, I got my lieutenancy in Cahir"—that is right. "How came you to get your lieutenancy? Whose troop was it, to begin with?—The G troop." Now I cannot make that out to be right, because Captain Polhill Turner tells us that he was lieutenant in his troop, the A troop, before he went into the G troop (Captain Morton's troop), which was the last troop Roger was in. Then the defendant is asked, "What troop were you attached to before?—The A (pronounced Ah) the A troop, as you call it. Q. Who was the captain of the G troop in which you got your lieutenancy?—Captain Morton. Q. We have heard he is dead?—He is dead." Now, as I said before, there seems to be a serious mistake here. Captain Polhill Turner was asked this question: "I think you were captain of one of the troops?—I was captain of the A troop. Q. I think at that time you were Captain Polhill; you had not assumed the name of Turner?—I assumed the name at the end of 1852, on the death of a relation. Q. Now when Roger Tichborne joined, did he join your troop?—No. Q. What troop did he join?—He joined the F troop, Captain the Honourable Augustus Jocelyn's. Q. Was he afterwards transferred from that to the G troop?—He was afterwards; but he was in my troop previously to going into the G troop. He marched down to Cahir with head quarters, and he joined my troop in Cahir barracks in a rather odd way." I think Captain Polhill Turner said something about a lieutenant in his troop having got into some scrape through playing tricks of some kind or other, and that when the regiment went to Clonmel he was left at head quarters and Tichborne was taken instead; there was some circumstance of that kind. If Captain Polhill Turner's statement is right, it shows the defendant to be wrong as to his having been a lieutenant in Captain Morton's troop before he was in Captain Polhill's. With Captain Polhill Turner's troop Roger went to Clonmel. Afterwards, in July, 1851, Captain Polhill Turner was ordered to Waterford; but for some reason, I do not know what, Roger, instead of going with this troop, to which he was then attached, remained with the troop which took the place of Captain Polhill Turner's troop, namely, Captain Morton's troop; and there he remained until October the 29th, when he joined his own troop, and remained with it until February, 1851, when he rejoined the G troop. The Horse Guards' paper records this: "The troop to which he was attached marched on 17th July, 1851, from Clonmel to Waterford, but he appears to have remained at Clonmel with the troop that arrived there from



Cahir until October, when he rejoined his former troop at Waterford." It thus appears that he remained there till October, when he joined his former troop; and I think those circumstances account for how the defendant made that mistake. He was aware of the transfer from the A troop to the G troop (Captain Morton's), and assumed that it was from the former that he was promoted to the latter; whereas he had been transferred into Captain Polhill Turner's troop. However, the mistake may have been merely confusion of memory.

In that year 1850 two visits were paid to Roger, which require to be noticed—one by Mr. Hopkins and the other by his father. The visit from Mr. Hopkins was for the purpose of getting the deeds appertaining to the settlement of 1850 executed by Roger, and Mr. Hopkins came over for that purpose some time between the 7th and the 11th of May. I say between the 7th and 11th of May, because Roger writes to Mr. Vincent Gosford on the 7th, and makes no mention of Mr. Hopkins; and he writes again on the 11th, and says Mr. Hopkins has been to him bringing the deeds, and that he has executed those deeds, and so the settlement has been finally accomplished. In September his father paid him a visit of three or four days, during which time he occupied the present Colonel Norbury's quarters, that officer being absent; and after that visit was concluded, we know from the letters of Roger and from a letter of the father to his wife, then Mrs. Tichborne, that Roger accompanied his father to Dublin and spent two days with him, and then returned to the barracks at Cahir. As to those visits the defendant's knowledge seems to have been of a very confused character. He is asked by Mr. Giffard: "When you were at Cahir, do you remember being visited by anyone?—I was visited by my father. Q. Was your father alone, or did anyone come with him?—Nobody came with him excepting his valet. Q. What was the name of his valet, do you remember?—William. Q. Do you happen to know what his other name was?—No, I cannot remember. Q. You do not remember his other name, your father's valet." Then he thinks of it and says "Burdon." That was the man whom he did not know when he was at Croydon, but mistook for one of the Nangles. "Q. How long did your father stay?—Not very long; I think about three or four days. Q. Three or four days?—Yes, to the best of my memory, three or four days. Q. Well, did your father come over for any particular object, or simply to see you?—He had an object in coming. Q. What was the object your father had in coming?"—"Surely," interposes the defendant, "that is not necessary."—It was a question put in chief, and therefore must have been on instructions.—"I am afraid," says Mr. Giffard, gravely, "we must hear what it was?—To get my consent for selling Upton. LORD CHIEF JUSTICE BOVILL: He wished

what?—He wished to get my consent to sell Upton. Mr. GIFFARD: Did you and your father agree in the discussion of that subject or not?—No, we did not.” Now, whenever there is any attempt made by uncle or father to induce Roger to sell Upton he always gets into a fume and writes to Mr. Gosford, complaining of the subject being again brought up. I find no trace of any such thing in Roger’s letters of that period: therefore, I should very much doubt any discussion having taken place on the subject of Upton, more especially as Roger writes at the time about his father’s visit, and speaks of it as one which had caused him great pleasure and satisfaction; and I do not think if the father had brought up a discussion on the subject of Upton at that time we should have had the letters worded in so pleasant a style as they are, without any complaint about it. Besides which, it was only quite recently that the final settlement of the matter had been accomplished in those deeds which had been executed in the month of May. Then this question is put: “Afterwards, did somebody else come to you upon the same subject?—Yes, Mr. Hopkins, of Alresford. Q. How long did Mr. Hopkins stay with you?—About two days; three or four days. Q. Did you or did you not agree with Mr. Hopkins?—No, I did not. Q. As to this intended arrangement for selling Upton?—I did not agree with him. Q. You did not?—No. Q. Can you tell me at all about what your age was at the time when these two interviews took place? Was it before or after you were twenty-one?—After, in 1851. Q. After you were twenty-one?—It was in 1851. Q. Do you mean both visits were in 1851?—Both. Q. Both from your father and Mr. Hopkins?—Yes. Q. Can you tell me at all what was the interval between the two visits?—No, I cannot at this moment. Q. I suppose you can give me something like the limit, whether it was as long as six months apart, or a shorter time than that, or a longer?—No, I do not think it was so long as that. Q. It was not so long as six months?—It might have been over two or three or four, but certainly not over six.” Now, as I have just said, there is no intimation in Roger’s letters of any attempt, either on the part of his father or Mr. Hopkins, at that time to induce him to sell Upton; and it is a total mistake to suppose that those visits took place in the year 1851; they took place, both of them, in the year 1850; and the defendant reverses the order of them; he puts the visit of the father first and of Mr. Hopkins last. And, what is a still more remarkable thing, he wholly omits all mention of the purpose for which Mr. Hopkins really did come, and makes him out to have come for the purpose of getting his consent to the sale of Upton, whereas what Mr. Hopkins did come for was to get the deeds executed which constituted the settlement of 1850, and which deeds proceeded upon the assumption that Upton was not to be sold. Roger had resolutely

resisted the sale of Upton, and the consequence of that was that the settlement had been framed on an entirely different basis; but of that the defendant seems to have been wholly unaware, as also of the fact that Mr. Hopkins had come for the purpose of getting those deeds executed, and not of having any discussion upon the subject of Upton. He reverses, too, as I have said, the order of the visits, puts the visit of the father first, and that of Mr. Hopkins last; whereas Mr. Hopkins came to him between the 7th and 11th of May, and the father came to him the first week in September.

It was while the regiment was at Cahir that a curious circumstance is stated by the defendant to have happened on the inspection of the regiment by a one-armed general, whom we know to have been General Napier. The defendant's account of it is that Captain Polhill, as captain of the troop, which he then was, forgot his word of command, and could not draw the troop out of an awkward position into which it had got. He says, "I happened to think of it and took them away, and, of course, he got reprimanded for it. Q. You happened to think of it?—I did not think of it; I happened to see it. I drew the troops out, my lord." The FOREMAN is evidently struck with this remarkable statement, and says: "We had better have that over again. Mr. GIFFARD: Will you be kind enough to say that over again to the jury? The Witness: We were hemmed in against the barrack walls—the troops were—and Captain Polhill had forgot the word to give to draw them out—to take them out—and there was an orderly officer sent over to ask again what the word was, and during his absence it occurred to me, and I gave the word of command, not thinking of giving it to him for the moment. I did it on the spur of the moment. I have no doubt I ought to have given it to him and let him say it; but I gave the word of command and withdrew the troops. Mr. GIFFARD: I think you added that Captain Polhill got reprimanded;—Yes; I really do not like to speak about these things, but you force me into them; it is very disagreeable to me." Why, his counsel was putting the questions on instructions he had received; therefore, I cannot help looking upon that observation as savouring somewhat of hypocrisy. Then comes the significant question: "Do you know whether Captain Polhill was pleased with you with regard to that transaction afterwards?—No, he certainly was not. I went into the G troop shortly after that." If Captain Polhill Turner is right, he did not go into the G troop for months afterwards. This story, you see, is told apparently with the purpose of suggesting that, Captain Polhill Turner having been reprimanded in consequence of the defendant, as junior officer, having given the word, he took it as a slight, and was therefore ready to turn against him when called upon to identify him. Captain Polhill Turner repudiates this story



altogether. And it certainly seems a very strange thing that an officer of Captain Turner's standing should have forgotten the word of command, and sent an orderly to ask it—to whom or of whom we are not told. Next, let us see what was the word of command which the defendant represents himself to have given. On being asked in cross-examination, "What word of command did you give?" he says, "'Wheel three to the left.' Q. And that extricated the troop from its difficulty, did it?—I am not certain at this moment, but I think it was 'Wheel three to the left.' Q. But surely this is a matter that Mr. Giffard asked you about. Cannot you tell me whether it was 'wheel three to the left?' What was it?—Yes, I believe it was. Q. Will you swear it was?—Yes, I will swear it was. Q. Will you swear that?—Yes. Q. That you will swear?—That I will swear. Q. Did that make them go on or go back?—Really, I cannot understand. Q. Therefore you cannot tell?—No, I cannot understand what you mean. Q. Cannot you? Going forwards is going forwards, and going back is going back: what was the effect of this word of command? If the horses are facing you and you call out 'Wheel to the left,' which way would you be going, forwards or backwards? Did they go forwards or backwards?—I do not understand what you mean, and nobody else either. Q. What is the word in the cavalry for going back? What do you do when you desire a troop or a squadron to go back? What do you call it? What does the officer who gives the word of command do?—Do you mean to retreat? Q. No; that is just what I did not mean. What is the proper word? Not 'retreat,' is it? What is the proper word for retiring a troop back?—I do not understand what you mean. Q. You do not understand me?—No, certainly I do not. If you wanted to back a troop, of course you would wheel them round and take them back. Q. And what would that be called in cavalry language? What would you be said to be doing to that troop? (No answer). You cannot tell me?—No I certainly cannot. LORD CHIEF JUSTICE BOVILL: If you want to retire a troop you say you wheel them round and take them back. Is that what you said?—Yes, my lord, that is what I said: you cannot get the horses to go backwards. Q. You cannot get the horses to go backwards?—You would not be able to get the horses to go backwards; you must turn them round." Let us see if we can make out what all this means. Captain Polhill Turner denied the whole story peremptorily. But then he assumed that this was alleged to have taken place at Clonmel. There was an inspection at Clonmel; but it was by General Macdonald, not by General Napier. Clonmel is not in the same district as Cahir; and whereas General Napier had the command of the district in which Cahir is, General Macdonald had the command of the district in which Clonmel is; and Mr. Giffard having introduced the ques-

tions which gave rise to this statement on the part of the defendant, when he was dealing with the time of service at Clonmel, Captain Turner seems to have supposed that what the defendant was speaking of was the inspection at Clonmel; and he says that, so far from there having been any reprimand on the occasion of the inspection at Clonmel, of himself or any other officer, the general, after certain evolutions had been made, complimented them on the way in which they had been done: therefore, he says that this statement of the defendant was, to use his own words, "a gratuitous lie for which there is no foundation." But I think when it comes to be looked at, it was not, as Captain Polhill Turner had been led to suppose, an inspection at Clonmel, but an inspection at Cahir, about which the defendant was speaking. There were two inspections at Cahir in that year, both of them by General Napier. One was in May, about which Roger writes in a letter of that date that they had gone through the different cavalry evolutions, and that the General complimented them afterwards on the way in which they had been done, and was very much pleased with the regiment, which, therefore, of course could not have been the occasion in question. But there was also another inspection, as the Horse Guards' paper records, in the month of October, and on that occasion, not the troop, but the squadron of which Captain Polhill Turner's troop formed part, does seem to have got into some difficulty, and to have got hemmed in up against the wall of the barrack yard, and to have been unable to get out of that situation satisfactorily. That was in 1850 at Cahir, not in 1851 at Clonmel. But what was it that did in point of fact happen? The defendant says it all arose from Captain Polhill Turner forgetting the word of command, and not knowing how to get his troop out of the difficulty. The fact, as I just said, is that that troop formed part of the squadron, but there is very great question whether Captain Turner commanded the squadron or not. A soldier who was there, and who was examined before you, a very intelligent man, Alexander Cumming, says his recollection is that the troops which formed the squadron were commanded by the senior officer, Captain Custance, and not by Captain Turner; and, what is still more to the purpose, he explains that it was not the omission to give the word of command, but misjudging the distance, that caused the mishap; that the officer commanding the squadron did not give the word of command in sufficient time, and therefore they got too near the limits of the barrack yard, or wherever it was these evolutions were being made, and were hemmed in in that way; that when the word of command was given, it was impossible to get the horses round; and so they got into some confusion, and the result was that the general was angry, and ordered them extra drill. The observation the man made was, "The fault was the officer's, but the punish-

ment was the men's." The man's explanation appears clear and satisfactory, and it is borne out by another witness, Owens; so that the truth of the matter seems to have been, not that the commanding officer, whether Captain Custance or Captain Turner, forgot the word of command, but that it was given too late. But supposing that Captain Polhill Turner had commanded, and that it was his troop that got into difficulty, I must ask, did anybody who understands military affairs, or is conversant with military discipline, ever hear of such a thing as that if the officer in command failed to give the necessary order, the cornet should take upon himself to give the word of command in the place of the captain, or the commanding officer, whoever he happened to be? It is not quite clear what rank the defendant meant to represent himself as holding at this time. He certainly was not lieutenant, because we have the date of the inspection in the Horse Guards' paper, which says that it took place in the middle of October, whereas Roger was not made lieutenant until the 22nd of November. Therefore, supposing there was any difficulty, there would be the lieutenant intervening between the captain of the troop and Roger. Can we suppose that Roger, not being a particularly bold, presuming person, even if there was the difficulty that his superior officer forgot the word of command, took on himself, being the third officer in the troop, to supersede the captain and lieutenant in giving the word, and so retired the troop? My learned brother reminds me that we know from the evidence that Roger had a difficulty in giving his orders at any time from his defective pronunciation of the English, and the men, instead of obeying, laughed at his word of command. Just consider whether this statement is consistent with any notion reasonable men can entertain of military discipline. It is a matter entirely for you to judge of. I should add that Cummings is quite positive that there was no mistake about the order, except that it was given too late, and that Lieutenant Tichborne, or Mr. Tichborne, as he was at that time, whom he remembered being present, never gave the word of command. His evidence is very positive indeed on that point.

Then there is some evidence—I do not know that it is worth while to detain you with it—I refer to the evidence of Captain Villars Morton and Major Kellett—as to the relations of Roger Tichborne with Captain Morton's family during his stay at Cahir and Clonmel, showing that the defendant's recollection of that family and its component members is inaccurate; but I do not know that it is worth while to go into a matter comparatively of so small importance. To proceed: we know that Roger in the month of October was sent from Clonmel to Waterford to join the troop to which he properly belonged, which was Captain Polhill Turner's, the A troop. The defendant says that Captain Polhill Turner went away on leave, to get married,



and having left the regiment, did not return to it after his marriage, and that he (defendant) had charge of the troop, and handed it over to the captain who succeeded to it, the previous adjutant Bickerstaffe. But Colonel Bickerstaffe says Roger did not hand it over to him, though he happened to be the subaltern officer there, but that he took possession of his troop, as a matter of course. But there is a question in my mind whether Colonel Bickerstaffe is not wrong; whether he and the defendant are not both wrong about Roger having been the officer in charge of the troop while Captain Polhill Turner was away; and my reason for saying so is, that when Roger rejoined his proper troop at Waterford, he remained there until the 14th of December, on which day, having got leave, he went away, leaving Captain Polhill Turner there. It was on the occasion of that leave that all the scenes which we have heard so much of took place at Tichborne with reference to his cousin, Miss Doughty. He went away on the 14th of December for two months' leave, and of course returned on its expiration on the 14th of February; but he did not go back to Waterford, for he writes on the 14th of February, from Clonmel, and from that time his letters are written from Clonmel. Now it might have been that he gave up the charge of the troop to the new captain before he left Waterford; but that cannot be, as the defendant says he took charge of the troop on Captain Polhill Turner going away, and handed it over afterwards to Captain Bickerstaffe. But when Roger Tichborne went away he left Captain Polhill Turner at Waterford; for I find him on his arrival at Tichborne writing to Captain Polhill Turner at Waterford, telling him that there had been a mistake about putting up his clothes; that he found he had got Captain Polhill Turner's dress clothes instead of his own, through the blundering of his servant, and he requests Captain Polhill Turner to send him his things, saying that he was doing the same thing with regard to Captain Polhill Turner's, which he had thus taken away by accident. This plainly shows that Captain Polhill Turner was still at Waterford. However, it is quite possible that Tichborne may have been sent over to Waterford to take charge of the troop in the possible event of the new captain not having arrived at the time of Captain Turner's leaving. And this would seem to be Colonel Bickerstaffe's view of it. But he altogether denies that Tichborne handed over the troop to him. Then you remember there was a good deal of questioning about Waterford, and the old bridge at Waterford. The defendant would have it that there was more than one bridge at Waterford; and he speaks of the river at Waterford. Well, the evidence which we had was that there is but one large bridge, a well-known bridge of Waterford; a remarkable wooden bridge, which spans the water there; and there is only that one, except it may be over some little rivulets, or small streams.

The defendant says there are several, and talks of Waterford as being on the sea. That brings us to the end of the time passed at Clonmel and Waterford. Then the regiment goes back, as we know, to Dublin; it is dismounted there; it is first reunited for the purpose of being dismounted, with the view of the regiment going to India; and in the month of June—I think on the 1st—the regiment finally leaves Dublin, and that brings us to the end of the life in Ireland.

Before I quit the subject of the life in Ireland let me call your attention to a most remarkable passage in the evidence of the defendant. From the time Roger Tichborne went to Ireland to the time he left it he kept up, as you are aware, a constant correspondence with his aunt Lady Doughty; and you know what that correspondence was. It was one of the most interesting character to Roger, as relating to subjects which would be the most important and the most interesting that a man could well discuss—religion, morals, habits, prospects in life, and, above all, the love for his cousin Kate Doughty, which clung to Roger throughout the whole time. In that period of two years and seven months there passed between Roger and Lady Doughty ninety-six letters, which have been preserved; and the probability is that there were more. So that we may put that correspondence at least at one hundred letters, which would import, on an average, a letter from each party about every fortnight upon those most interesting and affecting subjects. Would the recollection of that correspondence, as long as memory lasted, ever be effaced from the mind of the man who had been a party to it? and when that question is answered, let us see what the defendant says about it: “Were you at this time, during the time you were in Ireland, keeping up a correspondence with your friends in England, writing to them? Did you write to any one of your friends in England?—I have no doubt I have, but I am sure I do not remember. Q. Who were the persons that you were writing to from Ireland, can you remember?—No, I do not remember who I wrote to. Q. Did you write to your father, Sir James Tichborne?—He was in France, I think. Q. You did write to Sir James Tichborne?—Yes, certainly. Q. To Lady Tichborne?—Yes. Q. Did you write to any other of your relations in this country?—I wrote several letters to Mr. Gosford, I think. Q. You wrote several letters to Mr. Gosford, you think?—And to other people; I really cannot remember who I wrote to. Q. Gosford was not a relation: I asked you if you had written to any of your relations?—Very probably I did; I do not remember. Q. Do you remember whether you did or did not write to any of your relations from Ireland? You say you did write to Mr. Gosford; at least, you believe you did: do you remember if you wrote any letters to any other relations?—There is no doubt I wrote one to Henry Seymour. Q. There is no doubt you wrote

to one of the Seymours?—I did not say to one of the Seymours.

*Q.* Who was it you did write to?—I say I have no doubt I wrote to Henry; I do not remember the instance of it. *Q.* To any one

else while you were in Ireland?—Yes, I did write to Henry I know.

*Q.* Did you write to any one else?—Really I do not remember who I wrote to; it is quite impossible for me to say. *Q.* Did you ever

write to Sir Edward Doughty?—I do not think so; I do not remember doing so. *Q.* Did you ever write to Lady Doughty?—I do

not remember doing so; I should think the probability is that I did.

*Q.* Did you ever write to your cousin, Miss Doughty?—I do not

remember whether I did or not. *Q.* Surely you can remember

whether you wrote to Miss Doughty or not from Ireland during the

three years?—I do not remember whether I did or not; I should

think the probability is that I did, but I am not certain. *Q.* Did

you ever receive letters from her?—In Ireland? *Q.* Yes?—I do

not think I did; I do not remember doing so. *Q.* During the three

years you were there; I take it roughly at three years"—It was not

so long; it was only two years and seven months—"I am not

taking it by the card—during the time you were in the army?—I

have no recollection of having done so. *Q.* Did you ever have any

letters from Lady Doughty or Sir Edward?—Not from Sir Edward,

I do not think. *Q.* Did you ever from Lady Doughty?—I might

have done, but I have no recollection of it. *Q.* I know you might,

of course; so might I. What I mean is, as far as you recollect,

did you?—I have no recollection of receiving any particular letter.

*Q.* You have no recollection of any particular letter; did you ever

hear from her, or not, during the time you were in Ireland?—I have

no recollection of it; but it is almost certain that I did. *Q.* Did

you say you are almost sure you did?—The probability is that I did.

*Q.* Cannot you recollect for certain whether you had letters from

Sir Edward, or Lady, or Miss Doughty, while you were in Ireland?

cannot you remember for certain?—I have no recollection of it:

there is no doubt but what I did, but I have no recollection of it.

*Q.* What makes you say there is no doubt but what you did, if you

have no recollection of it?—I do not think it is at all probable I should

be there that length of time without hearing from them. *Q.* I do

not want to catch you, do you mean all three?—From the family.

*Q.* I take the family one by one: I am taking now your cousin,

Sir Edward Doughty and Lady Doughty. I will come to Henry

Seymour and others in a moment?—I was speaking of those three

that you mentioned. *Q.* Then we are as one about that. What I

want to know is, cannot you recollect for certain whether you heard

from Sir Edward and Lady Doughty or not while you were in

Ireland?—No, I have no recollection of having received a letter

from them." Gentlemen, I do not know that in the whole range



of this case there is anything to my mind more striking than these answers; and the question really is whether as sensible, rational men we can believe that such a correspondence as that can have thus become entirely effaced from the memory of a living man, so that he should have forgotten having received a single letter of it? For in that correspondence are included, as I have reminded you, letters from Lady Doughty upon a subject which I think no man can doubt was the nearest to Roger Tichborne's heart, the hope of marrying his cousin, with whom nobody can doubt he was at that time deeply in love. I do not know any better test that can be put to the memory of anyone than that. You must judge of the effect of the answers given upon a matter as to which he was most fairly and properly subjected to inquiry as a test whether he was the real, true Roger Tichborne or not.

While we are dealing with the defendant's knowledge of the military life of Roger Tichborne, as thus tested on cross-examination, let us see whether the amount of knowledge of military matters displayed by him is such as might fairly be expected from a man who had been between three and four years in a cavalry regiment. Many questions were put to him as to which it would be perhaps unfair to take his answers as a criterion, because I cannot altogether help thinking that some difficulty may have arisen from the questions being put by an interrogator not conversant with military matters. Of course it could not be expected that the Solicitor-General should have the knowledge of a military officer, and so perhaps the questions were not all put to the defendant in so intelligible a form as that his answers should be binding upon him; still some of them were so elementary that one would presume that a man who had been three years in the army could not fail to have a knowledge of them. On cross-examination he was shown a leaf from a book called the 'Queen's Regulations;' on which was written the name of "Roger Tichborne Esquire, Carabineers;" and he is asked what book that has come out of, and he says, "It is rather hard to tell." "Why, is not that a piece," says the Solicitor-General, "of the 'Queen's Regulations'?"—Very probably it is. Q. Is not the 'Queen's Regulations' a book that every officer in the army would know a part of at the first sight of it? Well, you will not swear that that is a piece out of the 'Queen's Regulations,'" to which the defendant makes no answer; and the Solicitor-General asks, "Why, is not it a book which every officer has thoroughly to make himself acquainted with the contents of, and to show he has a copy in his possession, at every inspection, to the general, and, in fact, is to a young officer what a Bible ought to be to a child? What do you say?—What do I say? I tell you I do not know; I do not know anything of it. Q. Do you know anything of such a book?—Of course it is a leaf from the 'Regula-

tions.' Q. What is the 'Queen's Regulations?'—I have told you what sort of thing it is. Q. Now what is the 'Queen's Regulations?'—There are certain regulations put down by which an officer should know other regiments by. Q. By which an officer should know other regiments by?—Yes, and different regulations you have to go through. Q. What else?—There are other regulations in it." Then it is handed to the jury; and then the examination seems to have dropped with regard to that subject.

Then comes a thing which, I think, most of us civilians are aware of, and which certainly one would have expected an officer who had been three years in a cavalry regiment to know. He is asked, "How many squadrons were there in your regiment?—Let me see"—Then a pause ensues. Then the Solicitor-General says, "Surely, surely"—Serjeant Ballantine interposes. "Give him time." Then he has time; and then the Solicitor-General asks again, "How many squadrons were there in your regiment?—There were seven different troops. Q. How many squadrons? is my question. Do you think a troop and a squadron the same? Are a troop and a squadron the same?—Yes, I believe they are. Q. You think they are—a troop and a squadron are the same?" Then Lord Chief Justice Bovill, surprised, looks up and says, "Do you say you think they are?—Yes." Now we had it properly explained afterwards by Captain Manders, who had been some time adjutant of the regiment—it was necessary we should have evidence on the subject, though most of us, I suppose, knew it—that a squadron is formed by uniting two troops. Is it possible that a man could have been three years an officer and not know that fact? The next question put to the defendant was, "How many men were there in a troop?" And the answer is, "Some troops had more than others. Q. What was the average number during the three years you were in the Carabineers?—I have no recollection; from 100 to 150, I should think. Q. In each troop?—It might be more. Q. And seven troops?—Yes, I think there were seven troops. Q. The Carabineers in your time were something nearly 900 strong?—Well, between 900 and 1,000 strong. LORD CHIEF JUSTICE BOVILL: Is that so?—Yes." Now we know from Captain Manders that the regiment consisted of six troops, with fifty-five men and forty-five horses to each troop—there being always a greater number of men than of horses, because there are many supernumeraries, officers' servants, and men employed in other ways, who are not mounted, except when the regiment goes on active service. Six troops, with fifty-five men and forty-five horses to each troop, would make the strength of the regiment about 330 men and 270 horses. So that the defendant puts the strength of the regiment at exactly three times that which it was, which is again an instance of the absence of the knowledge

which you would probably think a man who had been for some time an officer in a regiment might have been expected to possess. It is not for me to usurp your province; it is for you to determine whether you would reasonably expect that an officer who had been three years in a regiment of cavalry should be able to tell you the difference between a troop and a squadron, and within certain reasonable limits the strength of the regiment, and not lead you to suppose it was 900 or 1,000 strong, when in point of fact it was only something over 300.

He is next asked what a *serre-file* is, and he says, "Really, I do not know what a *serre-file* is. Q. Were you ever a *serre-file*?—Not that I am aware of." Now we have had it explained to us that the term *serre-file* is applied to supernumerary officers who follow in the rear of the regiment, and who are not taking an active part in the command in the particular evolution which is being carried out; and we are told that that is an old term in the army which every officer would necessarily know. Then he is asked about close and open order, and he explains the difference between close and open order—or as it is now called, I think, order and open order—and says it consists in the distance between knee and knee—the lateral distance between man and man, and not the distance between rank and rank. That was the defendant's view of it. It is quite clear that as to that he was totally wrong. We have had before us the officers who had the drill of the regiment, and who commanded it, and from them we know that the difference between close order and open order is not the lateral distance between one man and another in the rank, but the relative distance between the two ranks. There were other questions put, but those are the most striking ones. But the learned Counsel for the defendant says, "You must not be surprised at the defendant displaying ignorance on these subjects, because Roger never mastered his drill, and if the undoubted Roger had been asked these questions, even at the time he went away, he would not have been able to answer them." That might be a very good explanation, if the evidence bore it out. It is true that Roger was an inefficient officer. Though he had a decided inclination for the service, he appears to have had but little aptitude for it. But though when mounted he broke down in any attempt to give the word of command efficiently, it appears that he understood the theory of the drill very fairly. We have the positive statement of Colonel Bickerstaffe, who was at that time the adjutant of the regiment, and having taken a liking to this young fellow, who appears to have been of a very amiable disposition, used to have him in his rooms and teach him the movements with pieces of cardboard; and he tells us that Roger understood the theory of the thing perfectly; it was only when he had to put it into actual practice that he broke down and failed. And even this is said to have arisen very much from his



being a bad cavalry horseman, and having a difficulty in managing his horse in the field. But the remark which properly presents itself is that the matters which these questions refer to are really not matters of complicated drill at all. What was the strength of the regiment? How many troops were there in the regiment? What was the strength of each troop, and therefore of the regiment? What is the difference between a squadron and a troop? What does the term *serre-file* mean? What does close and open order mean? Those are elementary things which a man acquires a knowledge of in the course of a very few days; and, after the evidence of Colonel Bickerstaffe, it is difficult to suppose that Roger Tichborne would not have known those things; and equally difficult to suppose that if he ever had known them he could so entirely have forgotten them.

Then there is another instance of defective knowledge adduced, which is this:—It seems that while staying at Alresford, the defendant, on the occasion of a visit paid to Colonel Lushington, met Captain (now Major) Williamson, brother of Sir Hedworth Williamson, an officer in the 60th Rifles, and they got into conversation and talked about the 60th being at Dublin at the time that Roger Tichborne was quartered there. Captain Williamson asked him if he recollected being quartered at Dublin with the second battalion of the 60th, not mentioning Rifles, but assuming that anybody acquainted with military matters would know that the 60th was a regiment of rifles. Captain Williamson did not speak of it as having happened in his own time, because it was before he joined the regiment, but mentioned that he knew that the second battalion of the 60th and the Carabineers had been on very intimate terms, and had been quartered at Dublin in the same barracks. He is asked, “Did he make you any answer?—Well, he said he did not recollect much. Q. He did not?—No, he said he did not recollect it, but he asked me if it was in Portobello barracks. I said I thought it was not. He then said, ‘Was it at Island Bridge?’ I said I did not think it could be Island Bridge, because Island Bridge was a cavalry barrack, purely a cavalry barrack. He then made the remark, which struck me as very singular, ‘Oh, then yours is not a horse corps,’ either before or after, I cannot recollect. Q. Was there any further conversation about the regiment that you remember—any military conversation?—There might have been, but the whole military conversation that I had with him gave me a strong impression that that gentleman had never been a cavalry officer. Beyond that I do not recollect.” Now it was left rather doubtful up to that point whether the defendant had not looked on Major Williamson as an officer of artillery, because that is what he says, as you will see from his statement. He was asked whether he met this gentleman, in company with a Mr. Liddell, at

Colonel Lushington's; that is at Tichborne; and he says he did. "Q. Did you speak to him about the horses of the 60th Rifles?—No, that I certainly did not. Q. That you swear?—Certainly, I swear it, because the man I mean was not in the 60th Rifles at all. LORD CHIEF JUSTICE BOVILL: What?—He was not in the 60th Rifles at all, the gentleman I am speaking of. The SOLICITOR-GENERAL: Did you have any conversation with any one belonging to the 60th Rifles; I suggest to you it was Captain Williamson; about the 60th Rifles?—I think not. Q. Will you swear you did not recently?—It is a very hard thing to make me swear it; I have no recollection. Q. Surely, you can tell me whether you had any conversation with any young officer of the 60th Rifles lately?—Well, I do not think I have. Q. Will you swear you have not?—I do not think I ought to swear I have not. Q. You may do as you like about it, as far as I am concerned; will you swear?—I should like you to explain where I met this person, and whether it is the same person I mean or not. Q. No; you are not meeting a young officer belonging to the 60th Rifles every day of your life. I ask you whether you ever had any conversation with a young officer of the 60th Rifles?—Captain Williamson called on me, and I certainly had a conversation with him; but if you are speaking of a person belonging to the 60th Rifles, he might belong to the 60th Rifles now. I do not know, I am sure, but the person I am speaking of belonged to the artillery. The SOLICITOR-GENERAL: Did you have any conversation with any gentleman who was a captain, or an officer at all, a captain in the 60th Rifles?—Not to my knowledge. Q. Will you swear you had not? LORD CHIEF JUSTICE BOVILL: He has already said he will not swear he has not. The SOLICITOR-GENERAL: Why, did not you meet him at Colonel Lushington's house at Tichborne?—Now you are explaining who the person is, I now know who you are speaking of. Q. Did you meet such a person?—I believe I did; yes. Q. Did you meet any one else belonging to the 60th Rifles?—No: I was not aware he belonged to the 60th Rifles." Then he says he had some conversation with Captain Williamson: "Q. Had you a conversation about the barracks and the quarters you had been in in Ireland?—Well, I really cannot say what the conversation was about; it is some distance of time now. Q. Had you a conversation with him about where you had been quartered in Ireland?—Good gracious! Do you expect me to remember conversation with a gentleman that I had over two years ago? Q. I do not expect you to remember the details or the words of it at all; but you met him and had a conversation with him, as I suggest to you, about your barracks in Ireland, leading to something about which I am going to ask you, and I do expect you to remember it, certainly. Had you a conversation with Captain Williamson of the 60th Rifles

about your quarters in Ireland?—I met Captain Williamson at Tichborne House, but I cannot tell what our conversation was about. *Q.* Was there with him also at Colonel Lushington's Mr. Athol Liddell, one of Lord Ravensworth's sons, a cousin of Captain Williamson?—I cannot recollect. *Q.* Do you recollect those two young gentlemen, Mr. Liddell, a son of Lord Ravensworth, and Captain Williamson, brother of Sir Hedworth Williamson, being at Colonel Lushington's and meeting you there, at Tichborne?—I remember meeting some gentlemen there. *Q.* Did two of the gentlemen, Mr. Liddell and Captain Williamson, being there together, have a conversation with you upon the subject of the quarters in Ireland?—Really I cannot answer that; there is no doubt they did, but I cannot answer. *Q.* You cannot answer for certain?—No, I do not remember one word of the conversation that passed. *Q.* We will see if we can remind you. Did you in the course of the conversation with Captain Williamson, Mr. Liddell—I do not know whether Captain or Lieutenant Liddell—being there at the same time, talk about the horses of the 60th Rifles?—I think not. *Q.* Will you swear you did not?—You see I cannot swear, because I have no recollection of any of the conversation at all; how can I swear? *Q.* You must know whether you talked about the horses of the 60th Rifles?—I have no doubt it would oblige you very much if I could, and if I could I would. *Q.* It is very kind of you to say so, but I do not want to be under an obligation, I only want what I am entitled to?—I tell you I do not remember one sentence of the conversation that passed on that occasion. *Q.* Did Captain Williamson say 'Horses! why we are an infantry regiment,' and did you say, 'Oh, are you? I thought you were a horse troop?' Will you swear that did not pass?—I certainly could swear that did not pass, for I am quite certain it never did. *Q.* Will you swear it did not?—I will swear I have no recollection whatever of saying any such thing. *Q.* Will you swear you did not?—How can I swear when I have no recollection?—as I said before, I have no recollection of speaking to Captain Williamson about a regiment of cavalry at all. *Q.* Will you swear what I have been putting to you—will you pledge your oath that that did not pass between Captain Williamson and yourself, in the presence of Mr. Athol Liddell, in Colonel Lushington's house at Tichborne—when I say Colonel Lushington's, I mean in the house at Tichborne, of which Colonel Lushington is or was tenant? Now answer that question?—How is it possible for me to answer? *Q.* How is it possible for you to answer? I cannot answer your question, but must repeat mine: will you swear that did not pass?—I have no recollection of what did pass, therefore I cannot swear, but I am quite certain no such thing passed. *Q.* Will you



swear it did not?—I am quite certain it did not pass. Q. I give you the time, at Colonel Lushington's house at Tichborne, a conversation with Captain Williamson and Mr. Liddell about barracks in Ireland, horses of the 60th Rifles, and Captain Williamson saying, 'Why, we have no horses you know; we are an infantry regiment?'—Yes, I believe the whole of it is false. Q. Will you swear it is?—You see, I cannot swear; I have no recollection of the conversation that passed, but Colonel Lushington was present the whole time. Q. May it be true?—No, certainly not; such a thing could not be true." Then Lord Chief Justice Bovill says, "If anybody asked me whether I stood upon my head yesterday or ten years ago, and stayed in that position for an hour, I should say I did not, and would swear I did not, because I should know I never had done such a thing?—I am certain I never did that, my Lord. The LORD CHIEF JUSTICE: I explained to you the difference before. There are some things a man, from his knowledge and recollection of himself, can say positively—that he did not say so and so, or that such a thing did not take place—but there are others, if he is uncertain about, he simply says, 'I cannot recollect, and will not swear.' And he is the best judge of his own position and knowledge, then he can say one way or the other. If I was so certain of a thing——?—Well, I am certain of that. The SOLICITOR-GENERAL: Will you swear that you did not speak of the 60th Rifles to Captain Williamson, in Mr. Liddell's presence, as a horse regiment?—Yes, I will swear I did not. Q. That you swear?—That I swear, yes." Gentlemen, Major Williamson having stated what I read to you just now, this further question was put to him by me: "I wish to ask you more particularly whether you are sure, before there was that observation made about yours not being a horse corps, you had given him clearly to understand it was about the 60th you were speaking?—I said the 60th Rifles." I asked Major Williamson that question, because it struck me on reading this cross-examination that there might be some confusion in the defendant's mind, and he might have thought that he was speaking to an officer of artillery; and as there is both horse and foot artillery, he might have made the mistake of supposing that he was speaking to an officer of mounted artillery, and not of foot artillery. To see whether that was so or not, I put that question to Major Williamson, and he said he distinctly gave the defendant to understand that it was the 60th regiment he was speaking of, a regiment which every man in the army would know to be a regiment of infantry, and not of cavalry. If we are to understand that the defendant spoke of it as a horse corps, it would show an ignorance of military matters one could hardly reconcile with the notion of his having been in the army at all.

I have already adverted to the defendant's ignorance of Lord Fitzroy Somerset. Independently of the difficulty of supposing

that Roger Tichborne could have forgotten a person with whom he had been brought into contact under such peculiar circumstances, it seems strange that a man who had been three years an officer in the army should know nothing, even of the name, of a leading military authority like Lord Fitzroy Somerset. I have also observed on the defendant's notion, when asked about it, that the Lord Lieutenant was the Commander-in-Chief in Ireland. It seems equally strange to suppose that a man who was three years an officer in Ireland, and twice quartered in Dublin, should not be aware that there was a Commander of the Forces as distinguished from the Lord Lieutenant. Another remarkable circumstance is that, according to Mr. Gosford, the defendant, when asked where he had been quartered in Ireland answered at Dublin and the Curragh of Kildare, it being quite certain that neither Roger Tichborne, nor, indeed, any part of the regiment, was ever quartered at the Curragh during Roger's time.

On the other hand we have many striking reminiscences of Roger Tichborne's military life. He knows the movements of the regiment, and of Roger Tichborne, and the names of the officers, and particulars connected with them. He surprises many of the Carabineers by referring to former events. The number and colour of a particular trooper's horse—the glandered horse kept in a particular stable—the horses burned in a stable at Fermoy—a low woman put into his bed at one time, and a donkey at another, and the name of the man who took the donkey out, are remembered, as well as the nickname of a particular trooper; and there are the other instances of memory detailed in the evidence I have recently repeated to you. You must judge whether these instances of knowledge outweigh the effect of ignorance displayed in the instances spoken to—always bearing in mind the important canon which I have ventured to lay down as one which ought not to be lost sight of in an inquiry of this kind—that in judging of the effect of ignorance or knowledge shown, we must consider how far the former may be the result of defective memory, and how far the latter, instead of being derived from within, may have been acquired through adventitious aid from without. So much for the defendant's military knowledge.

To return to the history of Roger Tichborne and the examination of the defendant respecting it. We next follow Roger with the regiment to Canterbury, where he remained till the 28th of the ensuing October. There are several important circumstances connected with this period, as to which the knowledge of the defendant was tested. Having arrived at Canterbury on the 4th of June, Tichborne, as we know, obtained a short leave of absence, and came up to London on the 14th, Lady Doughty and her daughter being then in town. His first proceeding was to execute his will, which he did on the 16th. The defendant being asked where he executed his will,

answered, "at Canterbury." But we know, from the attesting witness to the will, that it could not have been executed at Canterbury, the witness never having been at that city in his life. The will was in fact executed in London. It bears date, as I have said, on the 16th of June. The defendant being asked, with reference to another matter, whether he had executed his will prior to the November of the same year, was unable to say. Yet one would have thought that when a man had executed but one will, a will long in being prepared, and had executed that will on the occasion of his only stay in London in the year of its execution, he would have been likely to remember it. It is, however, not so surprising that the defendant should not have been aware that the will was executed in London, as he appears to have had no knowledge of this visit of Roger to the metropolis. Again, it was on the occasion of this visit to London that Roger accompanied his aunt and cousin to Tichborne, on their returning thither in consequence of news of Sir Edward having been taken ill. At Tichborne, as we know, matters of the deepest moment to Roger occurred. He applied to his uncle to allow of his immediate marriage with his cousin, which led, as we have seen, to a rupture of his previous relations with her and her parents. It was on that occasion that he gave Miss Doughty the paper of the 22nd of June. Of this visit to London, of the visit to Tichborne to which it led, of what took place at Tichborne, of the paper given to Miss Doughty, the defendant, as we shall see further on, when we go into the details of Roger's relations with Miss Doughty, knows nothing. The oral evidence and the correspondence fully establish, as it seems to me, that after the 22nd of June Roger never set foot within the walls of Tichborne. The defendant represents that he was there at the end of July or beginning of August; and not only was there, but then and there seduced his cousin; and that a week or ten days later, his attentions to his cousin having become known to her father, he was informed that those attentions were displeasing, on which they were discontinued, and he went "not so often as before" to Tichborne. A strange statement, if you shall be of opinion that Roger never was at Tichborne after the 22nd of June.

At the beginning of July we have Roger going to Poole for the purpose of assisting Mr. Danby Seymour at the election then going on. The defendant, we know, has stated that he himself received an invitation to become a candidate. We have already discussed the probability of that statement. I advert to it now only in passing, as being connected with the period we are upon. At the beginning of August comes the remarkable incident of the Brighton card case, which the defendant represented as occurring when he was quartered at Canterbury, and which, if it happened at all, must have happened at this period. That, also, we have fully discussed, and if I mention it now, it is only to observe that while, if you believe in its reality,



it would be a very strong fact in favour of the defendant that out in Australia, before he had the means of extraneous information in his power, as he afterwards had, he should have known of such a thing having happened to Roger Tichborne, so, on the other hand, if in your opinion the whole story is a delusion and a myth, you will hardly believe that Roger Tichborne would have invented such a story, or could have been imposed upon by it if told to him by some one else.

A further circumstance connected with this period was the statement made by the defendant, in the course of the cross-examination relative to Miss Doughty, as to his having paid attention to Miss Hales of Canterbury. On his re-examination by Serjeant Ballantine the question is put: "Do you remember any incident connected with the regiment and yourself, when you were courting Miss Hales?—I do not think you ought to put the word so strong, 'courting Miss Hales.' Q. At the time you were paying some attention to her?—Yes, several things. Q. Can you mention any that are now on your mind?—I used to take the men there to church on a Sunday. Q. What about taking them to church; that is done as an officer?—Yes. Q. Is there anything in connection with Miss Hales and taking the troops to church?—Only I used to go in there, and keep them waiting outside for an hour or two." On the present trial Miss Hales was called, and not only denied that Roger Tichborne had ever paid her any attention, but said she had no recollection of ever having known him. No mention of her name occurs in Roger's letters. In support, however, of the defendant's statement several of the Carabineer soldiers stated that they had seen Roger, on coming out of chapel, standing talking to Miss Hales, instead of at once marching the men off to the barracks. The facts would appear to be simply these:—The family of Miss Hales is an old Roman Catholic family, long since residing near Canterbury, and having a Roman Catholic chapel attached to their residence, to which the Catholic soldiers of any regiment quartered at Canterbury were in the habit of going on a Sunday. Nothing would be more likely than that a young officer, having charge of the men, should, on leaving the chapel, exchange a few words in the way of civility, with the lady to whose family the chapel belonged. The probability is that Roger Tichborne did so, though the circumstance may long since have vanished from Miss Hales's memory. The statement of the defendant that he went into the house is not borne out by the evidence; no witness has asserted that he ever set his foot within the door; and the statement that he kept the men waiting an hour or two while he was in the house paying attention to the lady is simply absurd. On the return of the men from church they had dinner, and that a detachment of men should be kept from their dinner for an hour or two, while the officer having charge of them was in a house paying attention to a lady, would of course be out of the

question. No witness has asserted that the men were thus kept waiting for more than ten to fifteen minutes; and the probability is, that to men waiting to be marched off to dinner, the time would appear longer than it really was. On the whole, is it possible to doubt the truth of Miss Hales's assurance that Roger Tichborne never paid her attention such as the defendant has said he did? But then we are told that Miss Hales, a lady of the highest respectability, is a Roman Catholic, and therefore under the influence of priests, and it is suggested that under such influence she has come here to state that which is untrue. I do not know what you may think of such an argument; I leave you to judge between Miss Hales and the defendant.

It was during his stay at Canterbury that Roger was taken with one of the seizures that came upon him on more than one occasion, and was for a short time in imminent danger. The surgeon of the regiment, we know, attempted to bleed him, first on one arm and then on the other, and, no blood coming, had recourse to the ankles, and on this proving equally unsuccessful, as a last resource, opened the temporal artery. How far a man having undergone this would be likely to remember it you can judge for yourselves. Whether the defendant remembered it you will be better able to judge when I go more fully into the details, which I must do hereafter with reference to a very important part of this inquiry.

From Canterbury we should follow Roger Tichborne to Upton. But the residence of Roger at Upton is so intimately associated with the statements of the defendant respecting his relations with Miss Doughty and the sealed packet, that I shall have to follow in detail the evidence of the defendant with reference to it when dealing with that subject, and I therefore pass it by for the present. At the same time I think I ought to remind you, that if Mr. Gosford is to be believed, when he saw the defendant on his first arrival in this country, he questioned him about Upton, but the defendant knew nothing about it. The defendant, however, denies that anything was said about Upton on that occasion. On his examination-in-chief, he stated that he went to Upton in October, which was right; but he appears quite unaware of the circumstances under which he came to reside at Upton, which we know was by the place being lent to him as a residence by Sir Edward and Lady Doughty, to prevent his taking a hunting-box in Hampshire.

Connected with the residence at Upton are the last visits of Roger Tichborne to Paris. I have already mentioned, when going through his adventures, that between the end of October, 1852, and his departure for South America, he paid three visits to Paris: the first, from the 5th to the 13th of November; the next from

the 17th to the 31st of December; the last, when he went to take leave of his father and mother, from the 26th of January to the 14th of February. On cross-examination the defendant is asked by the Solicitor-General when he last visited Paris previous to this final visit, and he says, "I do not remember. Q. Did you pay more than one visit about that time?—More than one visit over there? Q. Yes?—No, I don't think I had been over there. Q. When was the last time before this last visit?—I am trying to remember. I do not remember; I think I was either in December or January; I do not speak positively." He is pressed on the point. "Q. How long before that visit, which you say was the last, had you been at Paris? How long was it since you had been at Paris?—I do not recollect when it was. Q. What I want to know is, what you say is the date—I do not expect you to be specific to a day—of the last visit you had paid before that?—Certainly not in 1853. Q. How far back in 1852 had you been over to Paris? Can you tell me that?—I have no recollection how long it was. Q. Can you tell me about? Had you been in the winter of 1852, or in the autumn of 1852, or in the summer of 1852?—I have no recollection as regards the month. Q. I am not putting a month to you, I am asking you whether you can tell me about the time of the year; whether in the winter, in the summer, or the autumn, or the spring of 1852?—I think it was either the autumn or the winter. Q. Which do you think it was, the autumn or the winter?—I think winter. Q. That is your recollection?—That is my impression. Q. That is the best of your recollection. Where did you go to Paris from, in the winter of 1852, to the best of your recollection? Canterbury?—From Upton. Q. Then it was during the time that you were at Upton that you went to Paris?—I do not know for certain. Q. But do you believe so?—Yes. Q. That was the last time before the visit in February. Is that so?—It would be; yes." He is right as to the preceding visit having been made from Upton, and in the winter. But the recollection of the visits seems otherwise fainter and less satisfactory than might have been expected from Roger Tichborne.

I pass on to the circumstances immediately preceding the final departure of Roger Tichborne. As I have just said, we know that he left for Paris, to pay a parting visit to his father and mother, on the 25th of January, and returned to England on the 14th of February. The defendant on his examination-in-chief, is asked by Mr. Giffard: "Before you actually went, did you go over to France to see your father and mother, to take leave?—Yes. Q. About how long before your actual departure?—I think somewhere about the 12th or 14th of February—somewhere about that date." He has got the date of Roger's return, but, as we shall see, he is in a difficulty as to the time or duration of the visit. Then follows the fatal question, in answering which the defendant becomes involved in such



irretrievable confusion and inconsistency: "Where were your father and mother living at that time?—In the Rue St. Honoré." They had not lived there for eight years. "Q. Do you remember where—about in the Rue St. Honoré?—Opposite the Louvre." They never lived near the Louvre. He is asked: "I believe the whole time you were there was not long; how long did you stay?—One clear day, to the best of my memory."

Now, we know from Roger Tichborne's letters that he arrived at Paris, on the occasion of this last visit, on the 26th of January, and left it on the 14th of February. Instead of having been there one clear day, he was there nineteen. The incidents of the visit are put to him in the course of the examination, and herein the defendant is in utter conflict with the Paris witnesses. Mr. GIFFARD asks: "Did you see any one besides your father and mother during your visit on that one clear day?—Yes, I have no doubt I saw several people. Q. I mean any one you can remember?—Chatillon. How came Chatillon to be there?—He came over and wanted me to breakfast with him that morning, and my father refused. Q. Did he give any reason for refusing?—No more than, being the last morning, he wished me to be in his own company." The defendant, having thus stated that he had passed but "one clear day" at Paris on this last visit, is questioned on cross-examination as follows: "Q. Now, as I understand, this was a very short visit?—Yes. Q. You merely went there, I suppose, just to see them and bid them good-bye, and have done with it?—That is all. LORD CHIEF JUSTICE BOVILL: About how long did it last? The SOLICITOR-GENERAL: I think you say there, 'One clear day to the best of my memory.' Did you see any one besides your father and mother during your visit on that one clear day?—It might have been more than a day. Q. It was not much more? It was not any lengthened visit there?—No; it could not have been very long. Q. It could not have been very long. I want to fix the last visit. Surely you can remember; you fixed the 12th or 14th of February when you went there?—I say about that; I do not say distinctly. Q. I do not say you do. Would it be a visit numbered by hours, days, weeks, or months?—By days, certainly. Would you be surprised," asks the Solicitor-General, "to find that you were in Paris, or rather that Roger Charles Tichborne was in Paris, from about the 27th of January, 1853, till the 14th of February, 1853, in the same year?—Very possibly; I do not speak to a month. Q. You do not speak to a month. You said to my learned friend it was a very short time, and, to the best of your recollection, one clear day. I ask you, would you be surprised to find that you were in Paris from the 27th of January to the 14th of February?—The 14th of February? Q. That was my word?—I have no recollection of being there so long. Q. You were asked

to account, were you not, for having seen people? And you say, 'It was a very short visit, one clear day.' I ask you, would it surprise you to find it was nearly three weeks?—It does not surprise me at all. Q. It would not?—No. Q. Is it your notion that three weeks is a short visit? You were asked, 'I believe the whole time you were there was not long, you only went there to see your father and mother—how long did you stay?' You answer, 'One clear day, to the best of my memory.' You are asked, 'Did you see any one besides your father and your mother during your visit on that one clear day?' You answer, 'Yes, I have no doubt I saw several people.' That was my friend examining you, of course from your instructions. Would you be surprised to find that, instead of one clear day, you were, in Roger Tichborne's case, nearly three weeks, from the 27th of January to the 14th of February?—I am not at all surprised, but I do not remember it. Q. What do you say?—You say it was. Q. I say nothing of the kind. I ask you whether it would surprise you?—It would not surprise me at all. Q. What is your recollection that your visit was not a long one, you only went to see your father and mother one clear day. Which is true? that it was three weeks or one clear day?—I cannot tell you. Q. You gave as a reason for not going to breakfast with Chatillon, that it was your last morning, and your father refused you leave to go because it was your last morning?—Yes. Q. You had a reason, you see, for one clear day: which is correct?—I tell you my memory does not carry me back how long it was. Q. This is in 1853—for-give me for so often reminding you: we have the buttons, and the rook, and the trooper's mare, and the trooper's number; cannot you recollect? You did recollect it was one clear day, and you gave us a reason for not going to breakfast with Chatillon that it was the last morning, and he wanted you to breakfast with him, and you only went to bid your father and mother good-bye?—I am not certain that I did not go after that. Q. That you did not go after that?—I am not quite certain about it. Q. After the 14th of February, do you mean that?—Yes, I do not say that I did." There is, indeed, the possibility that, after the visit then spoken of, Roger, having gone over to Havre to join the 'La Pauline,' may have taken an opportunity to run up to Paris for a day. But the defendant does not say this, but speaks of the visit as having been made from Upton. And if it had been made from Havre, Roger, one would think, would have remembered it, and would have distinguished between the two visits, especially when the breakfasting with the Chatillons was brought to his memory. The defendant has no recollection of breakfasting with them at all.

He is asked: "I think I understood you to tell my learned friend that Chatillon asked you to breakfast, and Sir James Tichborne,

or Mr. Tichborne as he was then, refused to let you go, as it was the last morning?—Yes. *Q.* That you swear?—That I swear. *Q.* Did you breakfast with Chatillon at all during the time you were in Paris?—No, I did not. *Q.* Will you swear you did not, the last day you were in Paris, breakfast with Chatillon and Madame Chatillon?—Yes, I will swear I did not. *Q.* The last day but one, did not you? I now say the last day but one?—No, I did not. *Q.* I understand you to say you did not breakfast with him at all?—No, I did not, not on that occasion. **LORD CHIEF JUSTICE BOVILL:** On the occasion of that visit?—On the occasion of that visit, my Lord.” The Chatillons and the defendant, gentlemen, are here irreconcilably at issue. You remember the evidence of Monsieur and Madame Chatillon. According to them, Roger having called on them on the morning of the last day of his stay at Paris, remained, on their invitation, to breakfast, on which occasion they saw the tattoo marks on his arm. Either they have stated what was wilfully false, or the defendant’s story about his father refusing to let him go to breakfast with them, and of his being at Paris only a single day, is an invention of his own, the purpose of the latter statement possibly being to account for the fact of his not having other friends to mention as having been seen by him besides Chatillon, as it is to be observed, that the only person whom the defendant mentions having seen is Chatillon. He seems to have had no recollection of the dinner the last day of his stay, at which the old friends, Monsieur d’Aranza, the Abbé Salis, and Monsieur Chatillon were present, as those witnesses, as well as Burdon, have told us.

As a further incident of that visit, the defendant, in answer to Mr. Giffard, says he left with his mother a small gold watch and chain—the watch having been given him by one of his nurses—which he says his mother gave him back on his return—taking with him, instead, a silver watch, which Mr. Gosford had given him, and a steel chain, which he went out with Chatillon and bought to take abroad. According to Chatillon, the gold watch had been given to Roger by M. de Mandreville, on the occasion of his first communion. But this is not the only contradiction. Mr. Gosford has sworn that he never gave him a silver watch. M. Chatillon has sworn that it was not a steel chain, but a silver one, which he bought for Roger, and which was afterwards paid for by Sir James.

Again we have to ask ourselves whether the knowledge of the defendant as to the duration of his farewell visit to his father and mother, and the circumstances attending it, is such as might have been expected from Roger Tichborne. Would a visit made on the eve of a lengthened separation, and which, so far as his father was concerned, proved a final leave-taking for this world, have left so



feeble an impression as that a visit of nearly three weeks should be remembered as the visit of a day?

The last chapter in the history of Roger Tichborne consists of his voyage to Valparaiso and his travels in South America.

We know from Roger Tichborne's letters that the 'La Pauline,' the ship in which he sailed, having left Havre on the 1st of March, met with contrary winds and tempestuous weather, and having put into Falmouth on the 8th, was detained there till the 12th. On the examination of the defendant before Mr. Roupell, being asked whether the ship put into any port between Havre and Valparaiso, he answered in the negative. Moore, who was present at the examination, of course knew better. On the trial, Mr. Giffard, we may assume upon instructions, asks him as follows: "*Q.* Did your voyage continue straight on, or did you go anywhere from stress of weather?—We put into Falmouth from stress of weather? *Q.* How long did you remain in Falmouth?—Several days. *Q.* Did you ever go into Falmouth Bay again?—I did. *Q.* When was that?—On my return from Buenos Ayres two years ago. *Q.* At that time had you forgotten about going into Falmouth Bay before?—I had forgotten, and I was asked the question at the Law Institution, whether we called in anywhere between Havre and Valparaiso. My mind was impressed with any foreign port between the two; it quite slipped my memory as regards Falmouth, and when I returned to Falmouth I went into the harbour again, and that reminded me that we put in there for stress of weather. *Q.* You recognized the place?—I did." On cross-examination the Solicitor-General asks him: "Did you say one word to Mr. Roupell about your touching at Falmouth?—No. *Q.* Why not?—I could easily explain that. It slipped my memory at that time, and when asked by Mr. Chapman Barber if we touched at any place after leaving Havre, my mind was upon any foreign port, and I said we did not. The 'La Pauline' having touched at Falmouth for stress of weather had entirely gone from my memory, and as I have before stated, in my examination, I had no recollection of it until I returned to Falmouth upon another occasion. *Q.* Did you ever mention your having stopped at Falmouth on your outward voyage?—No, I believe I did not." Gentlemen, it is for you to judge whether you think the explanation thus given accounts satisfactorily for the defendant saying on the first examination, that they had put into no port between Havre and Valparaiso, as to which it may not be immaterial to observe that it appears from Roger Tichborne's letters that when the ship lay at Falmouth he went on shore and read the newspapers, as he mentions in his letter to Lady Doughty from Valparaiso.

There is reason to believe that on the voyage to Valparaiso Roger Tichborne met with an accident from a hook catching in his eyelid. Moore, the son of the old butler, of whom Miss Braine made mention, had gone out with him as servant, and not only would he be likely in writing home to Tichborne to mention the circumstance, but we know he kept a diary, and such a circumstance would, of course, be likely to be recorded in it. That some accident had occurred the defendant showed he was aware. Whether as Roger, or from his having heard of it when in the neighbourhood of Tichborne, you must judge. The doubt arises from his having given two very different versions of the story. When examined before Mr. Roupell, he is asked: "Do you remember any circumstance connected with yourself occurring on board 'La Pauline,' any special circumstance?—Nothing of a very serious character; I think not. I met with a slight accident from an albatross or something of that sort. I received a slight cut in the eye. Q. From the beak or the wing?—From the wing, I think it was; I do not remember which it was. Q. Was the bird on the wing?—No, it was on the deck of the ship. We had caught the bird; it was pulling him in by the line. Q. That was a slight accident, and passed away in no time? Yes, that was all. Q. Do you recollect anything else of importance or singularity which occurred on board the 'Pauline'?—No." Thus, while the defendant makes mention of the blow from the wing of the albatross, he knows of nothing else of importance or singularity which happened to him on the voyage. Moore was present at this examination, and must have seen that the defendant's statement was, to say the least of it, defective. On his examination on the trial, the defendant is better prepared. Mr. Giffard is instructed to ask him, "Do you remember anything happening to your eye during the voyage?—Yes, I caught a hook in my eye. Q. Describe in your own language. Tell us what the accident was, and how it happened?—The accident was a hook catching me in the eye. LORD CHIEF JUSTICE BOVILL: You are asked to describe it, and how it happened?—There were several hooks hung for the purpose of hanging birds on to skin. They were hanging down, I should say. As I was passing in, the swing of the hook, from the motion of the ship, caused the hook to catch in my eye." He states that this happened in the water-closet of the ship, in which the hooks had been hung up, as he went in on a Sunday morning for the purpose of skinning these birds. Then the question is put: "Do you know what birds you were skinning, or going to skin?—There was an albatross, and several Cape pigeons." Then he explains how the hook was taken out: "Q. You say this hook hurt your eye; what happened about that?—I do not exactly follow you.

Q. What I mean is, what happened ? This hook hurt your eye ?—Yes ; they had to file a portion of the hook, or cut a portion of the hook off, and then draw it through, on account of the jagger at the other end. Q. On account of something at the end of the hook, you say, I did not catch the word ?—There is a jagger at the point of the fish-hook to prevent it coming out after it is in. Q. Do you mean the barb of the hook ?—Not that they cut off, it was the other end. Q. How came the other end not to be cut off ?—That was the easiest thing to cut—at least, I supposed so. Q. However, you are certain it was the other end that was cut off ?—Oh, yes. Q. Do you remember who did that ?—Yes, the carpenter ; a man who acted as carpenter. Q. Do you remember at all with what instrument the end of the hook was cut off ?—I think it was slightly filed first, and then nipped off, to the best of my memory.” The Solicitor-General having read to him the examination-in-chief, asks him as follows : “ Q. Now, had you forgotten all about that when you were before Mr. Roupell ?—No, I was asked about the accident, and I described one accident that really did happen, and I have the mark that shows it did happen. Q. That is the second accident ?—Yes. Q. You had forgotten all about the hook ?—I did not mention it. Q. You were asked ?—I was asked, and I explained. Q. You were asked whether you recollected any particular circumstances connected with yourself on board the ‘ La Pauline ’ ?—Well, that was a particular circumstance.” The Solicitor-General again reads the former questions and answers : “ ‘ Nothing of a very serious character ?—I think not ; I met with a slight accident from an albatross, or something of that sort. I received a slight cut in the eye. Q. From the beak or wing ?—From the wing, I think it was ; I do not remember which it was. Q. Was the bird on the wing ?—No ; it was on the deck of the ship. We had caught the bird ; it was pulling him in by the line. Q. That was a slight accident, and passed away in no time ?—Yes, that was all. Q. Do you recollect anything else of importance or singularity which occurred on board the ‘ Pauline ’ ?—No.’ Now, do you mean to tell the jury, on your oath, that the albatross, and the blow in the eye, and the cut, was a totally different accident from the one you described to Mr. Giffard in your examination-in-chief ?—Yes ; on my oath, I say so. Q. Did the blow from the albatross leave a scar too ?—Yes, the mark is here somewhere. Q. Which was the worst accident—the accident from the blow of the wing of the albatross, or the accident from the hook which struck through your eye, that had to be filed and nipped off ?—I should think the cut in my eye was the worst, although the other had the appearance of being the more serious. Q. The other had the appearance of being more serious ; that is to say, was near



upon being more serious than the other?—Yes; where the hook was taken out, it healed up in two or three days, and there was nothing more of it. *Q.* I was going to ask you whether it left any mark?—A very small mark; it has left a mark. *Q.* That was the right eye?—Yes. *Q.* And the other in the left?—And the other in the left. I think, if you read on, I describe it as my left eye. *Q.* And that was the serious one?—Not very serious.” Then the Solicitor-General again reads the defendant’s cross-examination before Mr. Roupell; and having reminded him of his having seen Moore in the interval, reads over the defendant’s statement as to the other accident given on his examination-in-chief, and then continues: “You are asked, before Mr. Roupell, if you recollected anything else of importance or singularity which occurred on board the ‘Pauline,’ and you say, ‘No’?—Probably I did not at that time. *Q.* You mean to tell the jury that the two accounts refer to totally different things, do you?—To totally different things. *Q.* And then when you were before Mr. Roupell, you did not remember what you told my Lord and the jury?—I did not speak of it, I think. *Q.* And when you were before my Lord and the jury, you were not examined as to what passed before Mr. Roupell. Is that it?—I do not think I was. *Q.* Then, before Mr. Roupell, when you are asked to state, you state one thing, and before my Lord and the jury you state another, and are not examined as to the other at all. That is what you state, is it?—I do not understand the way you put it there. *Q.* You said one thing, as I understand, before Mr. Roupell, and stated another to my Lord and the jury?—But I am asked about a different thing. *Q.* Quite so. Mr. Giffard did not ask you about the accident you mentioned before Mr. Roupell at all. **LORD CHIEF JUSTICE BOVILL:** I do not find you were asked about a different thing, because you were asked before Mr. Roupell whether anything happened on board the ‘Pauline,’ and then you mentioned the accident of the albatross?—Yes. *Q.* What Mr. Giffard asked you was equally general. ‘Do you remember anything happening to your eye during the voyage,’ and your answer was, ‘Yes.’ Then he says, ‘Just describe how that happened.’ And you go on and give a description of the injury to your eye in the manner which has been read. The question was the same in each case, or substantially the same. **SOLICITOR-GENERAL:** You mentioned one thing to Mr. Roupell and another to Mr. Giffard?—Very probably. *Q.* Eh?—So it appears. *Q.* ‘So it appears.’ Is that what you swear? It does not appear if you ask me?—Well, both accidents occurred. *Q.* So you say. Do you mean to say you were speaking of one accident before Mr. Roupell, and another when before the jury?—Yes, I was. **THE LORD CHIEF JUSTICE:** I see

by the report Mr. Giffard was very careful not to suggest anything. The SOLICITOR-GENERAL: Quite so. I am not in the least complaining of my learned friend. He asked a very proper question. 'Did anything happen to your eye?' and he said, 'Yes.' Then 'Describe how it happened'?—Yes; I knew at that time Mr. Giffard's instructions were upon that one accident, because I had been examined in the presence of Mr. Spofforth, by Moore, on that accident, and being the most recent in my mind, I thought Mr. Giffard was examining me on that. Q. Because you had been examined by Mr. Spofforth, in the presence of Moore, on that one accident? Mr. SERJT. BALLANTINE: No; examined by Moore, in the presence of Mr. Spofforth. The SOLICITOR-GENERAL: I thought it was the other way; but it is immaterial. You were examined by one or the other, in the presence of Moore or Mr. Spofforth, about this second accident, were you?—Yes. Mr. SERJT. BALLANTINE: About the other accident. The SOLICITOR-GENERAL: I call it the second, because mentioned last; but before you had seen Moore, and been examined by him, or in his presence, you did not say anything about this second accident?—I think not. Q. You are sure of it, are not you?—No, I am not sure; I might have mentioned it. Q. Will you have the kindness to point out to me any part of the examination in which you say one single syllable about any accident but this?—I do not say in the examination; I thought you said to anybody. Q. No, I say in the examination?—No. Q. Did you hear Moore examined here?—No, I did not. Q. You say you were examined about the second accident by him or Mr. Spofforth?—I did not say by him or Mr. Spofforth. I said I was examined by Moore in Mr. Spofforth's presence. Q. About this second accident?—About this second accident. Q. He reminded you of it, did he?—He cross-questioned me about it for the purpose of identifying me. Q. Did he say you had made a hash about the albatross?—I am not in the habit of making hashes. Q. Did he say so?—He did not say so. Q. That you were out about that altogether, or something of that kind?—He never said anything of the kind. Q. Did you remind him that you had had two accidents?—I do not know that I did; I think not. I merely answered questions that he put to me. I had no conversation with him whatever. Q. No conversation with him whatever?—That is to say, no regular conversation. Q. You did not mention to him this other accident?—No, I do not think I did. Q. About the wing of the albatross?—No, I did not. Q. Do you know that he did not mention it either here?—I do not know whether he did or not. Q. Did you recollect on what part of the voyage the two accidents happened?—One happened about a fortnight before the other, I think. It might have been three weeks.

*Q.* Did either of them lay you up at all, or were they both slight?—Neither of them laid me up. *Q.* You were not ill in consequence? Neither of them laid you up for any time?—No: I presume you mean by ‘laying up,’ confined to my cabin. *Q.* Yes, confined to your cabin, being in bed—being ill, you know?—No, I was not confined to my cabin one day during the whole passage.”

Gentlemen, it seems impossible not to feel that there is something unsatisfactory in the diversity between the account of the accident given before Mr. Roupell and that given on the trial, and one cannot help surmising the possibility that the interview with Moore, and the conversation which took place, as the defendant admits, on the subject of the accident, and the questions put to him by Moore about it, may have led to the entirely new statement made on the trial. Moore, of course, could have thrown light on this part of the case, and I must again express my surprise and dissatisfaction that he has not been called before you as a witness.

There remains only the last part of the undoubted Roger Tichborne’s history—his travels in South America. The examination of the defendant on this subject is of very great importance, but it has necessarily been anticipated in the discussion of the Arthur Orton case, and after the attention you then paid to it, I do not feel it necessary to trouble you by going through it again. I then called your attention to some serious errors into which the defendant had fallen, more especially with regard to his being ignorant of the first journey of Roger Tichborne to Santiago, which goes to the very root of his statement that Roger Tichborne was at Mellipilla. On the other hand, the knowledge of the defendant as to the movements of Roger Tichborne in South America would be indeed remarkable, and perhaps conclusive, were it not that the letters of Roger to his father and mother, which were for some months in the defendant’s hands, may have supplied him with the necessary information.

Before we pass to a totally different subject, a word or two on the defendant’s general knowledge. We endeavoured to take a fair review of Roger Tichborne’s intelligence, his education, and his attainments. We have seen the condition of the defendant’s knowledge in the matter of classical and scientific attainment, as exhibited on his cross-examination upon Stonyhurst studies. A list of Roger Tichborne’s books having been furnished, and several of them produced in Court, the defendant was very properly cross-examined upon the subject of these books, in order to see whether he had any acquaintance with the contents of the different works. Among them



was the ‘*Mémoire de Ste. Hélène, par le Comte de Las Casas*,’ and he says, “I had it, but I do not think when I went away. Q. What was it about?—I do not know what it was about, I am sure; it was a French work. Q. ‘*Mémoire de Ste. Hélène, par le Comte de Las Casas*.’ What was that?—I do not remember the subject. Q. What kind of book was it?—I do not remember the book at all. Q. You do not remember the book at all, nor what it was about?—No. Then he is asked about another French book, “‘*La Vierge : Histoire de la Mère de Dieu, par M. l’Abbé Orsini*.’ What was that about?—I do not know, I am sure.” Amongst Roger’s books were the plays of the great dramatist, Corneille; and I think it would be absurd to suppose that, having the plays of Corneille in his possession, Roger, who was certainly familiar with the plays of Molière, should not have known who Pierre Corneille was. “Q. ‘*Théâtre de Pierre Corneille* :’ what was that?—I do not remember that. Q. Do you remember what he was?—No; and I do not exactly understand what you say.”—It is repeated to him. —“‘*Théâtre de Pierre Corneille*’?—No, I do not remember. Q. What was it about, do you remember?—No; I do not remember the book. Q. Do you know whom it was by?” Now, Corneille’s Christian name was Pierre, and Pierre sounds very much like père, which is French for father, and so the defendant jumps to the conclusion that Pierre Corneille meant Father Corneille; and accordingly, when asked by whom the ‘*Théâtre de Pierre Corneille* was,’ he says, “It was by one of the fathers.” Could Roger have made that mistake? Could Roger, who had the plays of Corneille in his possession, have failed to know who he was? Having once known, could he have entirely forgotten? Would he have been led to suppose by the sound of the name that Pierre Corneille was one of the fathers of the church? Three or four other French works were put to the defendant, but he knew nothing about them. “Q. ‘*L’Irlande, par Gustave Beaumont* :’ do you know what that was about?—No. Q. Who was Gustave Beaumont? Do you know?—No.” Then the Solicitor-General asks him one or two rather insidious questions. “Did you know him? Was he a friend of yours?—No. Q. Are you sure?—I am certain. Q. You never saw him?—I never saw him. Q. Neither in France nor in England?—Neither in France nor in England.” He is quite right; I do not suppose he did. The other works put to him were all French, and the defendant knowing nothing about French, it was natural enough that he should not be familiar with those books. Still, if you have once been acquainted with a work, though you may have forgotten the language in which it is written, you may remember the subject of it. Then came a paper about Réné. A

paper is found in the handwriting of Roger, which is in these words, "I admire the life of René. He knew how to take his sorrows with courage and keep them to himself; he retired from all his friends to be more at liberty to think about his sorrows and misfortunes, and bury them in himself. I admire that man for his courage, that is to say, to have the courage to carry those sorrows to the grave which drove him to solitude." This having been read, the defendant is asked, "Who is René?" He answers, "That is an extract from St. Nicholas. Q. St. Nicholas; an extract from St. Nicholas—of what?—It is a religious book. Q. Who is St. Nicholas?—He was one of the saints. Q. What sort of saint was St. Nicholas? Of course I quite feel I am at a disadvantage, but I never did happen to hear of a writer St. Nicholas; who was he?—I am not aware he was a writer. Q. But I thought you said he was a writer?—I said from a book called 'St. Nicholas.' Q. Who wrote the book?—I do not know who wrote the book. Q. You are not speaking in your own person there; this is an extract from a book. When you say, 'How I admire that man,' is that extracted from the book? 'I admire that man for his courage'—that is to say, 'to have the courage to bear those sorrows to the grave which drove him to solitude'—is that an extract from St. Nicholas?—I should think the first part was not. Q. Eh?—The first part is my own words. Q. I am speaking of the last part. As far as I can make it out it is, 'I admire the life of René. He knew how to take his sorrows with courage, and keep them to himself; he retired from all his friends, to be more at liberty to think of his sorrows and misfortunes, and bury them in himself. I admire that man for his courage—that is to say, to have the courage to carry those sorrows to the grave which drove him to solitude.' Is that, all of it, an extract from St. Nicholas?—To the best of my belief a part of it is an extract from St. Nicholas. Q. Which part of it is an extract from St. Nicholas?—When I say an extract, it is from reading the book. Q. From reading St. Nicholas?—I think so, to the best of my knowledge. Q. What language is St. Nicholas written in?—It is written both in English and French. Q. What is it—a tale, or what?—It is the life of St. Nicholas the Saint." Now, the fact is that the René there referred to is a character in a beautiful story of M. Chateaubriand, and has nothing on earth to do with St. Nicholas. Therefore, one might well ask, what could have put St. Nicholas into the head of the defendant? The counsel for the defendant, however, has a ready answer. He says, "No wonder that St. Nicholas should be uppermost in the mind of the defendant, because Roger went to school at M. Dupanloup's, and St. Nicholas is the patron saint of little boys who go to school. True it is the

defendant has lost the faintest trace of recollection of going to school there ; he says he never did ; but though he has forgotten the going to school, the memory of the saint who was his patron when a little boy may still have remained impressed on his recollection, more especially as Saint Nicholas was so remarkable a saint." He certainly appears to have been the saint of saints in respect of the religious observance of the ordinances of the church ; for, says the learned counsel, who is so familiar with the history of the saints, when he was an infant at the breast he distinguished between fast days and other days, and would not take the breast on Wednesdays and Fridays. I do not think there would have been anything at all remarkable in the defendant having forgotten where this extract came from, if he had not ventured upon this particular notion of its being a passage from the 'Life of St. Nicholas.' It is impossible for a man to recollect all he has read ; and I should not have been surprised at Roger not recollecting this, except that the story of René seems to have made a deep impression upon him. Then the Solicitor-General asks, "Who was René?—René was the King of France at one time. Q. Well, one lives and learns : when was René King of France?—Really, I do not remember what year it was. Q. But was he one of the recent kings of France?—Oh, certainly not. Q. An old king of France, was he?—Yes, he was not a recent king. Q. You think, as far as you can recollect, the allusion is to René, King of France?—Yes." There never was a René, King of France. René, who was the father of Margaret of Anjou, was King of Provence, not of France. As the father of Queen Margaret, his name might occur in any history of England. But the mistake on this point is one into which Roger might easily have fallen. Then the defendant is asked whether he had ever read 'Anne of Gierstein,' as the source from which he might have become acquainted with the name of René, but he denied ever having read that work. Then they go through several other of the books, amongst others, the story of Atala, another story of Chateaubriand's, and that he appears to have forgotten. Then he is asked about 'Les Aventures du dernier Abencerrage ;' that he has no recollection of. I must say I hardly think it a very fair test of a man's identity that he has forgotten a great many things he read in his youth—forgotten the contents of books, which at an early period of his life he was familiar with ; but in testing a man's memory and knowledge, the aggregate of little things may become of importance, though in themselves, taken individually, they are not. He is asked about a book called the 'Practice of Elocution, bought by Roger Tichborne in 1849. He has no recollection of the book, but he knows that the practice of elocution means the practice



of speaking. He is asked about the Koran, of which Roger had a copy, and he does not know what it is. He is asked who Cromwell was, Roger having had a work called 'The Life of Cromwell.' Well he comes somewhere near the mark; he says, "Why he was the Commonwealth, was not he? Q. He was the Commonwealth man—or what did you say?—I said he was the Commonwealth. Q. Then I do not agree with you?—Oh, no doubt, it looked a little better. Q. I beg your pardon, I agreed with you too hastily." Another of Roger's books was 'The Life of John Bunyan.' The Solicitor-General asks him: "Who was he?—I have read it, I know. Q. Yes, that makes me ask you who it was. Who was he?—I forget. Q. What sort of a fellow was John Bunyan?—Well, I should think, quite the reverse of what you are." The answer would appear to imply that he knew something about John Bunyan as well as about the Solicitor-General. Then the Solicitor-General says, "None of us know ourselves, and that does not help me?—You do not know me either. Q. Now, perhaps, you will tell us what he was, as you have told us what he was not; what was he?—You asked me the question, and I told you I am certain I have read the book, but I do not remember the contents. LORD CHIEF JUSTICE BOVILL: What book is it you have read?—'The Life of Bunyan.' The SOLICITOR-GENERAL: That may be. You may have read 'The Life of Nelson or Wellington,' and know who he was, without remembering the contents. Who was John Bunyan, do you recollect?—No, I do not recollect who he was. Q. Was he a sportsman?—You can ask as many foolish questions as you like, I have no objection to them. Q. But who was he?—I have told you four or five different times I do not know. CHIEF JUSTICE BOVILL: It is not quite the same question?—No, my Lord. The SOLICITOR-GENERAL: You do not know what he was, whether he was a general, or a bishop, or a master of foxhounds, or a prizefighter, do you? The LORD CHIEF JUSTICE: What is the answer?—Well, it is very difficult to make an answer to such a question, my Lord." Now, of those of us who have read anything, I should think there are few who do not know who John Bunyan was, and who are not acquainted with that work, which will last as long as the English language lasts, and by which the name of John Bunyan will be perpetuated for all time—a work which anyone who wishes to know what pure, unmixed, undefiled English is should study, as well as for the contents of that most remarkable of all remarkable allegories; and I should think if there had been a 'Life of John Bunyan' amongst Roger's books, and if Roger had ever read the 'Pilgrim's Progress,' he would not easily have forgotten who John Bunyan was. But Roger may have had the book and not read it.

No question was asked of the defendant as to the works on the higher branches of mathematical science, with the names of which, at all events, Roger Tichborne was acquainted. In his memorandum-book I find, among other mathematical books mentioned, apparently with a view to their being purchased, such works as these: ‘Géométrie de Legendre;’ ‘Algèbre de Lacroix;’ ‘Trigonometrie de Legendre;’ ‘Calcul Intégral et Differentiel de Francœur.’ But as the defendant had confessed his ignorance even of the meaning of the term mathematics, any inquiry as to these would, of course, have been useless.

So much for the literary recollections of the defendant, with one additional circumstance. You know Roger had read ‘Molière,’ and amongst other plays of ‘Molière’ he had read the well-known play, ‘Le Misanthrope;’ and he discriminated between the characters, and sent the play to Lady Doughty to read; and there was a letter of hers to Roger, in which she points out which character she preferred—that of the man of the world to that of the man who hated the world. Roger seems to have taken the opposite line, and when taking a gloomy view of things, was in the habit, as Miss Nangle tells us, of calling himself a “misanthrope,” and we meet with the term about the time he had been reading this play, ‘Le Misanthrope.’ He says, “Everybody has gone out of town; lucky for me I am a misanthrope, because that reconciles me to it, and I am able to study.” Therefore he understood what it meant, and it was fair enough to put to the defendant: “Can you tell me what is a misanthrope?”—and then, in order that there might be no mistake, the Solicitor-General pronounces it in two ways—“mīsanthrope” and “misānthrope”—and he answers, “I do not know that I have made use of it. Q. Never mind about making use of it, can you tell me what it is?—No. Q. Do you know what it is? I mean whether a bird, beast, or fish, or what?—Well, I think I made an allusion to it once with regard to some book. Q. Well, what was ‘Le Misanthrope?’ That was in French. You used it in English—at least, I have no right to say that—I put it to you in English now. Dropping the ‘Le Misanthrope,’ what is a mīsanthrope, or misānthrope in English?—I am sure I cannot tell. Q. Do you know what kind of thing it is?—In English? Q. Yes?—I am not aware it is an English word at all.” He therefore did not know what the meaning of the word was, which is rather striking, considering that it was a word Roger knew and was in the habit of using frequently.

So much, then, for the knowledge of the defendant with reference to matters of literature, science, or history, with which Roger Tichborne may be taken to have been at all acquainted. But there still remains the most striking of all the instances of absence of knowledge

or memory of that which Roger knew, and I have no doubt you will at once understand to what I refer, namely, his total loss of the French language; because it does amount to a total loss. He stated on the former trial that he had forgotten even the letters of the French alphabet. Now up to the age of twenty-four Roger Tichborne spoke French by preference. An attempt was made more than once on the former trial by Serjeant Ballantine to account for the loss on the part of the defendant of the French language, by supposing that he had abandoned the use of it from an early period; and the defendant was asked on re-examination whether he continued to speak French when at Stonyhurst, and he said no, that they were not allowed to talk French, or to correspond in French. There is no evidence to confirm this statement. As to saying they were not allowed to correspond in French, the practical answer is to be found in the fact that the letters of Roger Tichborne to his mother, the then Mrs. Tichborne, up to the year 1847, are written in French—in abominably bad French, it is true—but still in French. It was not until 1847, when he felt himself to be a better master of English than he was of French, that Roger began to abandon the use of the French language in his letters. Then we have a body of evidence to show that up to the time he left this country he preferred speaking French to speaking English. The Nangles all tell us that whenever he was with them he spoke French to them; whenever he was at Paris the language of the family was French; his mother preferred talking French; and they all talked French. We know that from the servants Gossein and Burdon. Mr. Alfred and Mr. Henry Danby Seymour tell us the same thing. They are all familiar with the language, and they all say that to the last Roger preferred French. That he kept up his acquaintance with French literature is clear from his having so many French books; and we know from Captain Cunliffe that he continued to read French books while in the regiment. When he went out to South America, he went out in a French ship, and on the voyage he would of course talk with the captain and first officer with whom he associated. When he got to Chili, and Moore was unable to continue to be his attendant, he got a French servant, who remained with him until after he was at Lima; then he took another, Jules Barraut, who travelled with him until the last moment of his setting foot on board the ‘Bella.’ So that throughout that time he had the fullest opportunity, though travelling in a country where Spanish was the language, of keeping up his French; and the whole body of the evidence leads us to the conclusion, that to the last Roger spoke French as well as on the day he first left France for England; that it was the language of his preference. It had been in fact, and remained what you may call his mother



tongue; it was the language he had learnt from his first commencing to articulate words at all, and it was the language which remained the language of his choice to the very last. Can that have been wholly and entirely forgotten? The more so as we find that the defendant can speak Spanish—a language which he learnt during a very short stay—if his account is a true one, a stay of less than a year—in a country in which that language is spoken—and, at all events, can speak a certain quantity of it; I will not stop now to inquire how much. There was a witness whom I expected the defendant's counsel would call, who could have told us exactly whether Roger spoke Spanish or not, namely, Moore, who was in his company constantly while he was last at Santiago, before he took his course across the Andes and the Pampas, and who therefore must have perfectly well known whether at that time Roger could speak any Spanish at all; and if I had had it in my power, as judge of this court, to call witnesses, I should have called Moore, and asked him that question, as well as many others, because no doubt Moore could have thrown a vast deal of light on the whole of the South American life of Roger. Moore was produced at the last trial, and examined. He was brought into the court here on this trial to be identified, but he has not been called. I entirely agree in some observations I saw the other day in the 'Observer,' a newspaper we all respect—that it ought to be in the power of a judge in this country, as it is in some others, to insist on a witness being called; and I hope it will not be considered that our criminal procedure is perfect until the court has power to call witnesses whom for some reason or other neither side is disposed to call; because those witnesses are the witnesses from whom very often the truth may be the most effectually extracted; and if we had had power to call Moore here, we should have done so, and we should then have known to what degree Roger could speak Spanish at the time he finally completed his travels in South America. At the same time, we know from Roger's letters that he took out from home, as first introduction to South America, a Spanish dictionary and grammar; and he says he began to study Spanish while on board the 'Pauline.' Then he was in the country many months, and no doubt would be able to pick up a little Spanish as he went along, whether more or less we do not know. But the remarkable circumstance is that he should forget French, the language of his boyhood, of his youth, and of his life up to the time of going on board the 'Bella,' and that he should remember—if the defendant be he—the little Spanish he picked up—I mean the little Spanish in comparison with what he knew of French—that he should be able to speak Spanish with fluency and facility, as Mr. Gibbes tells us the defendant did to him,

and yet should have totally forgotten every trace of French. The question presents itself whether it is possible for a man to forget his mother tongue, which he has spoken up to the age of twenty-four. I know that instances are brought forward of persons who have forgotten their mother tongue, in consequence of being brought up, or living long, in a foreign country, but I should like to be acquainted with the particular circumstances of each case before I accepted them as facts. I believe, however, that many of them are more or less apocryphal. If the fact, it may have arisen from defective memory, or illness, or other circumstances, and I should like in each case to get all the circumstances and see whether there were any which might possibly account for such a result. In considering whether such a thing is possible, you must take into account all the surrounding circumstances; for which reason I say that I cannot accept as conclusive the accounts that one sometimes hears about this person or that person having lost all recollection of the language he formerly spoke, until I know something about the individual and the circumstances of the individual case. Among other things to be considered is whether you are dealing with a person of a strong memory or a weak one, an observation, by the way, which applies to the whole range of facts as to which the defendant has shown knowledge, or the want of it. Upon that I shall have to observe hereafter when I come to gather together the instances of his recollection. All I say at present is, that you have here a man who recollected after so many years every person with whom he was acquainted at Melipilla, who could give you the names of, I think, not less than fifteen in number; you have a man who, if his knowledge is not adventitious and derived from extraneous sources, has shown marvellous instances of tenacious memory. You must judge whether all recollection of a language, which was not an acquired language, but really his mother tongue, could have been entirely effaced from such a mind as that? Having done which, you will give such effect to the total oblivion of the French language as you may think it deserves. I do not say the thing is intellectually impossible; there are few things in the world that are impossible, and far be it from me to lay down absolutely and peremptorily that a thing is impossible because in the range of my own experience it does not happen to have occurred. But this I must and do say, that a case in which a man should forget the language of childhood, youth, and manhood, because he has lived twelve or fourteen years in another country, must be a most exceptional case, and a case which one would hesitate very much to accept. If there are so many striking and powerful facts in the case which show the defendant to be Roger, that they bear down all difficulties and carry conviction with them, then I should say, well, that he has totally forgotten his French is a thing one can scarcely understand and

believe ; but still the concurrence of all the facts showing that he is the man must make one say that, though such a thing may never have occurred before in the whole course of one's personal experience or reading, nevertheless the case must be taken to be an exception to what might otherwise be considered as the great and uniform rule. But we have here a mass of facts on the one side and on the other ; and amongst the facts which must be taken into account in determining whether the defendant is Roger or not, must be taken the fact, as a most exceptional one, and one which none of us have had personal experience of before, that, if Roger, in the course of twelve or thirteen years, he has totally forgotten every trace, even the faintest and minutest, of the French language, with which he was for so many years of his life familiar. There is a difference, moreover, between one's native language and an acquired language. You may wholly forget the latter, but even that very rarely happens. If you have once mastered a language you do not lose all trace whatever of it, and though from desuetude, from not speaking it, and not caring to turn to the books which are written in it, your recollection of it may become very faint, your habit of speaking it may become very rusty, and you can no longer think in the language, and the words with which you would clothe your thoughts will not come readily to your mind, yet you do not, so far as my experience goes, lose the entire recollection and knowledge of the language. But much more strongly does this apply to a man's mother tongue, spoken till the age of twenty-four ; and to say that in this case the defendant as Roger Tichborne has lost every trace of the French language, is to tell me that which I quite agree may not be intellectually impossible, but which certainly does savour, I cannot but think, of serious improbability, and which therefore as a fact must be put into the adverse scale, not possibly as a conclusive fact, but still as one which ought to be received as of great weight and cogency in the decision of the question of the defendant's identity. It is a matter entitled to a most serious consideration at your hands, and I should not be doing my duty in this matter if I did not strongly impress it as such upon your good sense and your conscientious desire to do your duty in this case.

I come now, Gentlemen, to another very important subject as to which the defendant's memory and knowledge have been tested, namely, the subject of the property ; and here I must ask you to recall to your recollection the various letters written by Roger Tichborne on the subject of the disposition of the estates, and to the facts which have been brought before you in evidence relatively to this subject. The first question is, did Roger thoroughly understand the disposition of the Tichborne property, and that of the Doughty property,



as fixed and settled by the settlements relating to those two separate properties? and lastly, did he clearly and distinctly understand the disposition of the Doughty estate made by his will in 1852? The Tichborne estate, at the time Sir Edward Doughty was alive, stood settled thus—it lies in a word, but it is essential to bear it in mind. First to Sir Edward Doughty for life, with remainder to his heirs in tail male. But Sir Edward Doughty had no sons, and there was no probability of his having any. It was next to come to Roger's father, Mr. James Tichborne for life, and then to Roger for life, with remainder to the heirs of his body in tail male; then in like manner, in case of the failure of heirs male of the body of Roger, to Alfred for life and his issue male after him; and in the event of Alfred not having issue male, then it was to go to James Dormer in the same way for life, with remainder to his heirs in tail male. So that, for the reasons I explained to you the other day, the disposition of that estate could not in any way be affected or altered. There were charges upon it to the extent of some 63,000*l.*; a very heavy charge indeed upon property worth only from 5,000*l.* to 6,000*l.* a year. By the settlement of 1850 the Doughty estates stood in a very different position; they were settled in a different way. There, in like manner, Sir Edward Doughty took for life, with remainder to his heirs in tail male, but there was no heir in tail male; then Mr. James Tichborne took a life estate, with remainder to Roger Tichborne, not for life, as was the case with respect to the Tichborne estates, but in fee; and therefore, Roger, having the reversion in fee, could, as I explained to you on a former occasion, deal with the estate exactly as he pleased, subject always to his uncle's and his father's life estates. But the life estate of the father extended over the whole of the property, and would entitle him to the entire income, subject to the charges which there were upon the property. Now the charges were very heavy, to say nothing of the jointures. There was a charge of 8,000*l.* in favour of Miss Doughty; there was a charge of 10,000*l.* which Sir Edward could create and dispose of by will; there was then the great charge of 100,000*l.* raised for the purpose of clearing the Tichborne estates of the encumbrances which existed upon them, and which amounted to 63,000*l.*, I think, in all; the residue to be applied to the purchase of lands in Hampshire to go to the aggrandisement of the Tichborne estate. Roger, having the power to deal with the reversion, made a will, and by that will he disposed of the estate as follows:—He gave to his brother an income of 2,000*l.* a year out of the estate, to be raised to 3,000*l.* a year in case of his marrying; and he directed that the residue should go to accumulate to pay off the heavy charges upon the Doughty estates; and, subject to that reservation and to the jointure of Lady Doughty, he disposed of his reversion in this way:—He left the

estate to his brother Alfred for life, and in the event of Alfred having one son only, then the whole of the Doughty estates were to go to that one son. With the Tichborne estate, as I have fully explained, his will could not in any way meddle ; that Alfred would take, under the settlement of 1844, in his own right. The Doughty estate he devised to Alfred for life, and to Alfred's son if he had only one son ; but if he had a second son, then this was to follow—a portion of the Doughty estate, namely, the London part of it, was to go to add to the Tichborne fortune which the eldest son would take ; the residue was to go to Alfred's second son. If Alfred had no sons, then it was to go to the second son of his cousin Miss Doughty, upon her marrying and having sons. If she had no sons, then it was to go to Alfred's daughters ; if Alfred had no daughters, then Miss Doughty was to take it for life, with remainder to her daughters ; and supposing all these failed, then it was to go to Everard Arundell for life, with remainder to his issue in tail male. That was the disposition which Roger made by his will. You will observe that the leading distinction between the two properties, the Tichborne property and the Doughty property, was this, that the encumbrance was cleared off from Tichborne by being put on to Doughty ; and that whereas Roger could not in the slightest degree affect the Tichborne property, he had the power, and exercised the power, of disposing of the Doughty estate according to his own will and pleasure. That was the distinction between the two properties ; and if you are of opinion that Roger thoroughly understood the dispositions of the Tichborne property, and understood thoroughly the dispositions of the Doughty property—firstly those made by the settlement, and then those introduced by his own will—the question will be, whether you find in the statements and explanations of the defendant a knowledge of those things equal to that which you would have expected to find in Roger, if you had had the opportunity of interrogating the undoubted Roger?

Now the first indication, or the first assertion of any knowledge on the part of the defendant of the property of the Tichborne family was made, as we know, at Wagga-Wagga. At Wagga-Wagga he tells Mr. Gibbes that he had inherited from his father an estate in Dorsetshire, called the 'Hermitage.' He tells him with regard to the property in Hampshire that it was entailed, and in the event of his death would go to a cousin. In both those statements there was no reality at all. His father never had a place in Dorsetshire, or anywhere else in England. There is not an estate of Hermitage in Dorsetshire or anywhere else. There is nothing of that name but a farm in Hampshire which was purchased after Roger left, and which certainly was not an estate in Dorsetshire derived from his father. The property in Hampshire would not on Roger's death go to a cousin,

but to his brother Alfred. Then we come to the Wagga-Wagga will, and by that will we find him disposing of properties which have no existence whatever. He disposes again of this Hermitage estate in Dorsetshire; he disposes of property at Cowes; he disposes of property at Ryde; at neither of which places had he a stick or stone; and he disposes of property at Wymering in Hampshire, as to which all we know is that there is a place called Wymering, but certainly the Tichbornes have not, and had not, any property there. The learned counsel for the defendant suggested, in the course of one of his speeches, that at some remote period, some centuries ago, the Tichbornes had property at Wymering, and we were to have some evidence on the subject, but we never got it; and if at any remote period they had property at Wymering, it is very unlikely at all that Roger would have heard of that fact or known it; certainly he could not suppose that he had property at Wymering at the time he was making that will. It is possible that in conversation about Hampshire, Wymering may have been mentioned to the defendant as a place in Hampshire, and so may have remained in his memory, and that when he had to draw upon his inventive faculty for the names of property, the name of Wymering may have presented itself to his mind; but certain it is, that the Tichbornes had no property at Wymering whatsoever. The will, therefore, displays the most absolute ignorance of the property which belonged to the Tichborne family. How comes it that that was so? The defendant was called upon to make a will. He could not get the money he wanted from Mr. Cottie unless he made a will; and of course he could not make a will without professing to dispose of his property. If he did not know the property, it was necessary to draw on his imagination for the names of properties to insert in the will; and therefore one can readily explain, if he was not Roger, and therefore did not know the real situation and names of the properties which Roger could dispose of, that having to make a will, in order to get money, he ran the risk—the immediate object being to get the money—of exposure at a future period, by putting in fictitious names. I can understand that. But he offers an explanation which is to be consistent with his being Roger Tichborne. He says—I wanted to deceive Mr. Gibbes; I did not want Mr. Gibbes to know what my property really consisted of. But the obvious question which suggests itself upon that is—Why not? Why run the risk of exposing yourself afterwards to the charge of being an impostor, by reason of putting in these fictitious names, if you knew the real names? What motive could there be for deceiving Mr. Gibbes? Why not tell Mr. Gibbes where the property was? What harm could it possibly do to him, if Roger Tichborne, when thus called upon to make a will, to put in the real names instead of



the fictitious ones? What conceivable motive could he have had for misleading Mr. Gibbes, who was doing all he could to assist him, as to what his property consisted of? No motive for desiring concealment has been suggested. That is the question that presents itself to everyone who thinks of the matter a moment. Is the explanation one which, to your minds, is a satisfactory explanation of that which otherwise seems incapable of any solution or explanation, but the one I just mentioned? If you think it is a reasonable explanation, of course the argument founded on the opposite hypothesis falls to the ground; but if you do not, you have a most signal instance of total, absolute, entire ignorance of the property which belonged to Roger Tichborne, and which Roger had power to dispose of. Then again, when you come to the latter period of his stay in Australia, you find him speaking of the Upton property as a place bought by his uncle Doughty. I have already explained my reasons for thinking that a mistake into which Roger could not have fallen. The defendant has fallen into it, if Roger, from forgetfulness, if not, from ignorance, from being misled by Bogle, who is clearly in ignorance on that subject. You must judge which of these alternatives is the right one.

So matters stand until the defendant comes over to this country, when of course his knowledge is tested on the subject of the property. One of the earliest questions was a question put to him by Mr. Gosford at their meeting at Gravesend, when Mr. Holmes was present, and who might have been called to control Mr. Gosford's statements if they had thought proper. "Who made your will?" We know who did—we know Mr. Slaughter made it; but when asked this question Mr. Gosford says his answer was "Hopkins of course." During his stay at Alresford, when staying at Rous's, who was Mr. Hopkins's former clerk, he would of course have learnt, if he did not know it before, that Mr. Hopkins had been the family solicitor; and he, therefore, naturally came to the conclusion, when asked that question, that Mr. Hopkins had made his will, which we know was a mistake. Now Mr. Gosford having asked him who made his will, of course the question carried with it by implication the fact that Roger, before going away, had made a will, and the next day Mr. Holmes and the defendant go to Doctors' Commons and search for and see Roger's will. The defendant is asked in his examination-in-chief whether he has seen that will again since he executed it; and he says, "Yes. Q. Have you seen the contents of it since?—No, it was in the hands of two of the officers of the Probate Court, or whatever you call it: it was in Doctors' Commons; I do not know what court it was. Q. Can you tell me about how long it was before you left this country that you executed the will?—It was a long time in preparation. Q. But I mean until the execution, or when you signed it;

do you remember about how long that was before you left—about? I am not asking you to a day?—I think about two or three months, to the best of my memory; I cannot say it was exactly two or three months. Speaking of the will, I remember I signed it at Canterbury; that makes me think it must have been about three months, or perhaps a little more.” Let me here observe in passing that the will was not signed at Canterbury. We have the dying depositions of Gibbes, Mr. Slaughter’s clerk, who was an attesting witness, and who says he recollects its being signed in London, he will not undertake to say whether at Mr. Slaughter’s or not, but he is sure that it was signed in London. He is quite sure that he, the attesting witness, never was at Canterbury in his life, and therefore could not have attested it at Canterbury, and therefore the will cannot have been executed there. But there is another circumstance which satisfies me it could not have been executed at Canterbury, and that is, that it is executed on the 16th of June. Roger came to town on the 14th upon a week’s leave. He came the night before his leave, which was from the 15th to the 22nd, began; and having come up to London, where he spent his time with Lady and Miss Doughty, he certainly did not go back to Canterbury while that leave continued. Therefore the fact that the will was executed on the 16th shows plainly that it must have been executed in London. That, therefore, was a mistake. Passing that by, he is asked on cross-examination, “The will you have no doubt seen since you came back to this country?—Yes, I told you I had seen it in charge of two gentlemen down at Doctors’ Commons; they were at one side of the table, and I was at the other. Q. I suppose you saw it, as anyone else could see it, by paying a shilling for it?—You labour under a mistake; I merely sat down, and they tested me. They asked me several questions, and they compared my signature.” I do not know whether any of you ever went to Doctors’ Commons to see a will; if you did you must know that that must be incorrect. If you want to see a will at Doctors’ Commons you go and pay a shilling, the will is shown to you, and you have full opportunity of reading it and making yourself master of its contents, and they do not inquire anything about your signature; it is no part of their business; the clerks have a good deal else to do; no such thing is ever thought of. If you want a copy of a will your attorney gives notice, a copy is made, he gets the copy and pays for it; and that is what Mr. Holmes did, because the defendant is immediately asked, “Have you seen it since?—No. Q. Or any copy of it?—No, I think not a copy of it. Q. You think not?—I fancy there was a copy in Mr. Holmes’s office. Q. You never looked at it?—I do not think I did; I do not think I ever read a line of it. Q. Do you mean to say that you do not think you ever read a line of it?—No, I do not. I firmly believe I

never read a line of it. Q. Do you know what was the object of having a copy there?—I suppose he had it for his own information.” If there was a copy taken, that Mr. Holmes talked the matter over with the defendant, and discussed it with him so as to make him aware of its contents, even if he did not show it to him, is I think a matter of too much probability to be doubted. Mr. Holmes did not get the will for nothing, and I cannot very much doubt that the defendant saw that will, or at all events was informed by Mr. Holmes of the contents of it. As I have already observed, to Mr. Gosford he stated that Mr. Hopkins made his will; afterwards, upon his examination-in-chief, he says that it was not Mr. Hopkins, and that he did not employ Hopkins, because he knew perfectly well that Hopkins would not keep the will secret, which he desired should be done, and he consequently got Mr. Slaughter to make it. If Mr. Gosford is a man upon whose statement you can rely, which is matter for your consideration, and if Mr. Gosford’s account is true, that information must have been acquired afterwards. With regard to the other circumstances connected with the will, such as the fact of Mr. Burrows having been the conveyancer who drew it, it may be asked how the defendant should have obtained that information? The answer is very simple. There was Mr. Slaughter’s bill of costs, which, of course, would have been preserved; it was too important a document to be destroyed; and if Mr. Slaughter’s bill of costs was forthcoming, it would show that Mr. Burrows had drawn the will, and would mention consultations having been had with that gentleman, and all the other circumstances connected with the will. All this would have been very easily ascertained by Mr. Holmes, who is an able attorney, and who seems to have acted for a very long while with very considerable zeal in this matter. Besides this, in the carrying into effect the trusts of Roger Tichborne’s will, there had been two or three suits in the Court of Chancery, in which suits the settlements had been set forth; and these documents would be accessible to Mr. Holmes on application at the proper offices; and thus Mr. Holmes had, at all events, even if the defendant had not, the means of procuring information as to the disposition of the Tichborne and Doughty estates under the former settlements and under Roger Tichborne’s will. The defendant, no doubt, satisfied Mr. Hopkins that he must be Roger, by giving him reason to believe that he understood what the dispositions of the property were. I presume that Mr. Hopkins would not have adopted him as the real Roger if he had not been able to satisfy him on a matter so immediately within his own knowledge as solicitor to the family. But if the defendant had knowledge of the dispositions of the property at the time he was in communication with Mr. Hopkins, it is quite plain from what I am about to read to you that when he was examined as



to these dispositions in 1871, he had not the most distant idea of what they were; and above all he had no idea whatever of the will of Roger, that is to say, upon his own hypothesis, his own will.

Now the first thing that is remarkable before that examination takes place is a letter which he writes to Mr. Rous. It is a letter written early after coming to England, and it is a very remarkable letter, a letter written in January, 1867, on his return from Paris: "You know I expected to find in Mr. Gosford a friend. But when I arrived in London from your house I found that instead of people in Rios proving my death, it was no other than Gosford and Slaughter who had sworn positively that I was dead, and that I died on the 26th of April 1864 and by so doing have deprived my father and mother out of any of the Doughty estate." He means, I suppose, that by proving or swearing positively that he was dead they had been able to prove his will, and that by proving his will they had deprived his father and mother of any of the Doughty estate. There never was so complete a mistake in the world. His father enjoyed every shilling of the Doughty estate, except that which was absorbed by the charges upon it, to the day of his death; and being able to charge the estate for the benefit of his wife upon her surviving him, he created two charges in her favour amounting to 2,000*l.* a year; and at the time this letter was penned Lady Tichborne was enjoying that 2,000*l.* out of the Doughty estate, and the 1,000*l.* a year which she shortly afterwards allowed the defendant was a part of it, because her own income did not amount to 1,000*l.* a year, and, therefore, she could not have allowed him 1,000*l.* a year if she had not at that time been deriving that 2,000*l.* a year from the Doughty estate. There never was in the world a more complete misconception of the whole case with regard to the dispositions of the property than is involved in that statement, except, perhaps, what I am now going to call attention to—that is, his statement made in his cross-examination in the Court of Common Pleas. Now in the cross-examination, which was a very proper one, he is asked—after having said that he had not seen the will, but that he knew the general purport of it—this question: "You say you have never seen it, and you say you know the general purport of that will: what was the object of the will? What was the general purport of it? I do not for a moment expect you to go into technicalities, but what was the object of the will." Observe the answer; every one of these answers is pregnant with matter: "The general purport of the will was to get rid of the 100,000*l.* that was on"—What?—"the Tichborne estate." There was not a shilling on the Tichborne estate. The incumbrances on the Tichborne estate were paid off by the 100,000*l.* raised on the Doughty estate for the express purpose of freeing Tichborne from its incumbrances. The Tichborne estate had been set free at the expense of the Doughty

estate—He says, “ The general purport of the will was to get rid of the 100,000*l.* that was on the Tichborne estate, that is to say, I formed by the will a reserve fund.” To the extent of the latter assertion he is right. There was a reserve fund formed by the will, but not to pay off the incumbrance on the Tichborne estate, for there was none, but to pay off that on the Doughty estate, which had been created for the purpose of liberating and setting free the Tichborne estate from the incumbrances which were previously upon it. The Solicitor-General asks: “ The general object of the will was to get rid of the 100,000*l.* on the Tichborne estate?” The defendant makes the extraordinary answer: “ I formed a sort of reserve fund by entailing my father.” One cannot conceive what he can have had in his mind when he said, “ entailing my father.” What can have been the notion which was intended to be conveyed in those words? His father had a life estate, and Roger had the reversion in fee; and it is perfectly true that he might out of his reversion in fee have carved an estate tail, of which he might have made his father tenant in tail if he had pleased, the effect of which would have been to enable his father, upon his death, and the will coming into operation, the father’s life estate being converted into an estate tail, to bar the entail, deal with the property as he pleased, and sweep away and entirely destroy all the provisions of the will from one end to the other. But the complete answer to it all is this, that from the beginning to the end of the will, the father’s name is never mentioned, nor could Roger deal with the property so long as the father’s life remained, otherwise than subject to his father’s prior right to the entire estate for life. “ *Q.* By doing what?” says the Solicitor-General, who evidently could scarcely believe his own ears?—“ By entailing my father. *Q.* ‘ By entailing my father ’?—It might appear strange; I may not have used the right expression. *Q.* I did not say anything to imply it was not. I was not laughing at you—by entailing your father upon what, or to do what?” Now observe this: “ I so arranged it that my father would have had 8,000*l.* a year out of the Doughty estate, and the rest went to the accumulative fund.” There is no provision about limiting his father’s income at all, nor was it possible that he could make any such arrangement. He could not arrange that his father should have 8,000*l.* a year only out of the estate. His power of dealing with the estate, being subject to his father’s life, could only take effect subsequently to his father’s death. He could not restrict his father to 8,000*l.* a year, nor did he attempt it. There is not a word about it from beginning to end. “ **THE SOLICITOR-GENERAL:** ‘ By arranging that your father should have 8,000*l.* a year out of the Doughty estate, and the rest went to the accumulative fund ’?—That would be of course on my death; I cannot exactly explain how you do it; it merely amounted to that. *Q.* I do not expect you to do it;

it would be unreasonable?" Then the defendant says, "My father, instead of getting the whole, or being able to do away with any part of the estate that was in fee simple to me, could only take 8,000*l.* a year out of it, and the remainder went to the accumulative fund to pay off the 100,000*l.*, and there was also property at Surrey which was to be sold, and I believe has been sold for that same purpose." Now, it is clear to my mind that he is here confounding the provisions which were to take effect upon the death of his father and upon Alfred succeeding to the life estate created by the will, with what he imagined was to take effect at once on the will coming into operation. The intermediate life estate of the father is totally lost sight of. There cannot be a greater confusion than is manifested in this account. Then the Solicitor-General goes on: "The object was to make an accumulative fund. Do I understand you to say, by the will you arranged that your father was to have 8,000*l.* a year?—I do not say I arranged he was to have it; it was so arranged in the will; instead of having the whole of the income, or being able to do anything with the whole of the property, he could not do so. *Q.* It was so arranged in the will—instead of having the whole of the income of the property, he was allowed 8,000*l.* a year?—I think it was about 8,000*l.* a year. *Q.* That was in case you died?—Of course, it would not have come into effect if I had not died. *Q.* Was that the main object of the will; I do not say there were not others?—The main object of the will was to clear off the debts of the estate. *Q.* You say you allowed your father 8,000*l.*; the rest was to form an accumulation fund, and clear off the debts of the estate. What was to become of the estate when cleared, do you remember? Do you recollect who the persons were you made the objects of your bounty?—Yes; James Dormer. In the event of my brother dying without children, he should take the name of Tichborne, and was to have the Tichborne estates." Why he could not dispose of the Tichborne estates. The Tichborne estates were disposed of by the settlement of 1844; and the entail not being barred, he had no more power over the Tichborne estates than he had over the property of any one of you. "*Q.* James Dormer, and what else?—And the Doughty estate was to go to Mrs. Radcliffe and her children." It never was to go to Mrs. Radcliffe at all, except under the circumstances to which I have called your attention. It was not to go to her children generally, but to the second son. "*Q.* How came you to select James Dormer in case your brother died without issue?"—The answer is remarkable—"I cannot very well forget, because I got into trouble about it with Mrs. Nangle." That leads to a strange episode in this story relating to Mrs. Nangle. But before I pass to that, just let me make one general remark on this statement. It is quite obvious that the defendant had somehow or other got into a maze of confusion on the subject of the property; that he had seen or had been informed



of the contents of these settlements and the will, and probably for a time got hold of the details with tolerable accuracy; but by 1871 the whole thing had become this sort of chaotic confusion in his mind; and he supposed that by his will he was dealing with the property in such a manner as to affect his father's interest, when it is perfectly certain that he could not by that will in the slightest degree diminish his father's enjoyment, or affect the life interest his father had. And what is still more to the purpose is, that in the will there is not a single provision relating to his father, nor from the beginning to the end does the father's name occur once. It seems impossible to believe that Roger Tichborne, in making his will, could ever have supposed that he could curtail his father's enjoyment of the property. But if he had entertained such an idle notion he would quickly have been set right by his counsel Mr. Burrows. All I can ask you to consider is, whether you think Roger could have fallen into this state of hopeless confusion? Did Roger understand the provisions of the settlements, and the provisions of his will, as they affected the disposition of the Doughty estates? Mr. Burrows, a most competent witness, as he is one of the most eminent conveyancers of our day, a man who would see in half a minute's conversation whether a man understood the provisions of a settlement he was going through with him, or not, as also his very intelligent pupil, Mr. Whitaker Bush, who I hope will succeed to Mr. Burrows' eminence, agree in saying that Roger manifested a thorough understanding of the will he was about to execute, which naturally implied a knowledge of the antecedent settlements upon which that will was to operate, and that he showed a degree of intelligence and knowledge about it seldom seen in a young man, a layman, not brought up to a knowledge of legal matters. And if that is so, and you find the confusion I have just read to you exhibited in the answers of the defendant, and compare these with the real disposition of the property, you must judge whether, in your opinion, it can be Roger Tichborne who is before you.

Gentlemen, there is just one more subject connected with this will before I pass away from it altogether. You will recollect that when Roger Tichborne learnt, which he did by some of the letters written to him when in South America, that Everard Arundell had become a Jesuit priest, not being lawyer enough to know that a man's will can only be altered by an equally solemn instrument, unless it is by implied revocation, which occasionally happens, he wrote home to desire that the name of Everard Arundell should be struck out of his will, because he objected to a Jesuit priest having the power to dispose of the estate if it should at any time come to him. Is that a thing that a man would be likely to have forgotten if a question were put to him leading his memory back to the circumstance? The

matter was put to the defendant in this way: "Did you ever make any addition to the will? Do you remember making any codicil or any addition?—No, I do not remember making any codicils. Q. Did you make any alterations in it?—Do you mean after it was signed? Q. Yes; strictly speaking it would not be your will until you signed it. After it became your will did you make any alterations in it?—I certainly do not remember whether I did or not. Q. Did you contemplate making any?—I cannot say I am sure." Then that is put to him again, and he says: "I know I went with Mr. Slaughter to make some alterations somewhere, I rather think it was in the draft of the will; I am not certain. Q. That was to a counsel, Mr. Burrows?—I think it was. Q. What I am speaking of is after it was your effective will—after you had signed it—whether you contemplated?—Contemplated? I did not know you said that; I thought you said whether I had actually altered it. Q. I said afterwards 'did you contemplate doing it?'—I believe I did. You read a letter in Court yourself the other day. Q. What do you mean? I think you must have mistaken some other letter for the letter I read; I have read no letter that I remember?—You read a letter that alluded to it, if you did not read the letter itself? Q. I think not?—I am quite certain you did: I am positive you did. Q. What alteration was it of which you are quite confident and quite positive that I read a letter alluding to the—I do not say alteration—contemplated alteration?—It was something I said I was sorry I had not put in." Then the Solicitor-General says: "What I want to know is, whether, after the will was signed, and was an effective will, you contemplated making any change in it, and either bringing some one in, or cutting some one out, or making serious alterations in the provisions of the will—any serious alteration in the provisions of the will?—I do not remember whether I did or not. Q. Cannot you remember that?—No, I do not. Q. Whether there was any one of the objects of your bounty whose name you proposed to bring into the will, or any one of the objects of your bounty whose name you proposed to strike out of it? Can you recollect?—Yes, but I do not recollect what it was. Q. Do I understand you to say such a thing passed, but you do not recollect what it was? Is that what you say?—You are referring to the Nangles. Q. Was anything done about the Nangles, or did you contemplate anything about the Nangles?—I cannot say; I have no recollection of it. Q. What makes you say I am thinking about the Nangles?—I have some idea there was something said." Then there is a long examination as to whether he ever contemplated doing anything for the Nangles, which I think comes to nothing, and which it is hardly worth while to go into. Then the Solicitor-General, coming more directly to the point, says, "What I ask you is, whether you recollect a communication, written or verbal, to Mr. Gosford—

you told me you do not remember one way or the other as to Mr. Slaughter—on the subject of an important alteration in the will, not as regards property (although in one sense as regards property), but as regards—— LORD CHIEF JUSTICE BOVILL: The disposition of the property. The SOLICITOR-GENERAL: The disposition of the property?—No; I have no recollection of that. Q. Were the Nangles in any shape objects of your bounty?—I think not. Q. Did you desire to make any alteration in that respect in their favour?—That is what I told you some time ago; I am under the impression I spoke to Mr. Slaughter about it. Q. To Mr. Slaughter?—Yes; but I do not think it was ever executed. Q. Was there any other person at all in respect of whom you wished, either your cousin, or any of the Arundells, or any of the other branches of your Tichborne connection, either before you left England or after you left England, verbal or written?—Certainly not after I left England. Q. What do you say as to before?—I find it very difficult to tax my memory about it. Q. Did you ever communicate with either Mr. Gosford or Mr. Slaughter, after you left England, on the subject of any important alterations in your will? You say you are certain as to that; I will take that first?—No, I do not believe I did. What would be the good of it? I could not sign it. Q. I will take, first of all, after you left England; will you swear you did not write or communicate to Mr. Slaughter or Mr. Gosford on the subject of an important alteration in your will?—To the best of my belief I did not. Q. That is your statement, that certainly you did not, after you left England? Is that so?—My statement is that I have no remembrance of writing anything whatever about my will after I left England about any alteration in my will.” Here, again, Gentlemen, you must judge whether a man who contemplated altering his will by striking out the person to whom the ultimate remainder in the property had been left by it, for the reason that that person to whom he had so devised the property in remainder, from a layman had become a Jesuit priest, upon having it put to him in that pointed form, whether he ever desired to make an alteration in his will after it was executed in respect of his cousin, or of the Arundells—would not have had the fact brought back to his mind if it had ever been present to it before? It is quite clear that the defendant was wholly unaware of any such letter as that written by Roger Tichborne desiring that the name of Everard Arundell should be struck out of his will.

Now, then, he had said with regard to the disposition in favour of his cousin, James Dormer, that he could not forget that, because it had led to unpleasantness between him and Mrs. Nangle. I should just tell you that what was in the will with regard to James Dormer was, not as the defendant seems to have thought, that James Dormer



was to take the ultimate remainder, or, at least, the remainder in the Tichborne property, after the death of Roger and his brother without issue, through the will. That arose out of the settlement of 1844. It is the fact, and it is possible that the defendant was alluding to that, that Roger Tichborne did leave by his will certain property to his cousin, James Dormer. He left him the property which had been bought in the neighbourhood of Tichborne out of the Doughty fund, the Hampshire property belonging to the Doughty estate, which was therefore part of the reversionary property he had the power to dispose of; he left that to James Dormer. The defendant appears to have thought that James Dormer took under the will a remainder in the Doughty estate itself. When, incidentally to this subject, asked about James Dormer, he says he cannot forget that, because it gave rise to a quarrel between him and Mrs. Nangle. "You say you cannot very well forget, because you got into trouble about it?—Because Mrs. Nangle was sister to my father, and she thought her son ought to have it, and she never forgave me. Q. You got into trouble with her, and she never forgave you?—No, not even to this day." That, you see, would account for Mrs. Nangle taking part against him; and it is, apparently, for that purpose, and with a view to suggest that motive for the conduct of Mrs. Nangle, that he brings this subject forward and gives it prominence. "Q. She never forgave you?—No, not even to this day. Q. Did you and she fall out about it?—She came down to me at Mr. Hopkins's house one day, and we had a few words about it." Now, that would plainly imply, so far as that statement goes, that Mrs. Nangle had become aware that by his will he had made a disposition of the Doughty estate, or at all events of this Doughty Hampshire property, which he had the power of dealing with, in favour of James Dormer, who, under the settlement of 1844, was to take the Tichborne estate proper, in the event of the failure of issue of Roger and his brother. But it seems to have occurred to the defendant, immediately after he had made that statement, that, inasmuch as the will had been a secret will, communicated to no one up to the time Roger went abroad, Mrs. Nangle could not have known of his having made a disposition in favour of James Dormer; accordingly he pulls up and says: "I think I am going rather too fast; I should like to explain myself. I do not mean to say she had a row with me about that, because she did not know who was in the will. She had a row with me because she wanted me to make a will in favour of her son at Mr. Hopkins's. I did not tell her I had done so"—that is, that he had made a will. "Q. I thought you said you had got into a scrape with your aunt, Mrs. Nangle, and she had never forgiven you to this day?—Just so; what I said I maintain. Mr. SERJT. BALLANTINE: Go on, and repeat it?—I say she has never forgiven me for it until this day.

The SOLICITOR-GENERAL: For what?—For having done so.

Q. Having done so?—For not having selected her son before others.

Q. How did she know that you had not selected her son?—How did she know? Q. Yes?—I tell you in the first place she knew nothing about it; what we fell out about was, she came down and wanted me to make a will in favour of her son, and I said I would not make any will, and she was under the belief I went away without a will, and so was every one else. I say she has never forgiven me for it to this day. During my absence she would have found it out, and she would never have lowered herself to such a degree to have acted as she did to me on my return unless she had known of it. They are all very forward and very fast in calling me an impostor—when a lady like her makes an impostor of herself I think it is something.

Q. This began, did it, in some words that you had at Mr. Hopkins's office?—You must not say it began then; they are two different subjects; one was before I went, and the other is since my return; they will not bear mixing up together.

Q. You said you had a few words at Mr. Hopkins's, and then, as you rightly observed, you went a little too fast?—What I said very plainly was this: I was at Mr. Hopkins's house on one occasion; Mrs. Nangle came there; we had a few words; she wanted me to make a will in favour of her son.

Q. You had this conversation with her 'and a few words:' what happened afterwards? Did you ever make it up with her? Did you ever see your aunt after you had these few words at Mr. Hopkins's office?—Yes; I believe I did see her once after that.

Q. Just tell us, if you know, when was this, that she had these few words with you about not making a will?—Not long before I went away.

Q. Who was present?—Mr. Hopkins was present, and Mrs. Hopkins.

Q. Mrs. Hopkins?—Yes.

Q. In the office?—You must remember I said it was in the house; you said the office.

Q. It is immaterial where it was: I thought you said the office; be it in the house. Mr. Hopkins was present, and yourself, and Mrs. Nangle? Anyone else there?—No one else there.

Q. Just tell us now what passed about this?—I have already told you.

Q. What did she say?—She tried to persuade me to make a will before I went away.

Q. What did she say? Did she say anything?—Really I cannot remember the whole of the conversation.

Q. Did she urge it upon you much?—Yes, she did.

Q. Did it last long?—No, not very long; I should think from a quarter of an hour to twenty minutes.

Q. You had this conversation with her, and you refused?—I refused to make a will.” The whole of this statement, from the beginning to the end, is positively contradicted by Mrs. Nangle, who calls it “a most dreadful falsehood.” She says that she never met Roger at Mr. Hopkins's, and never was in Mr. Hopkins's house while Mr. Hopkins was living in it: that neither there nor anywhere

else had she ever a single word with Roger Tichborne about making a will.

There being this conflict, in order to see on which the truth lies, one is led to ask one's self whether, and when, this could have happened. The defendant fixes the time as being about six or seven months before he went away. According to the defendant's account he had made his will at this time. Now Roger made his will on the 16th of June, 1852, and the only occasion on which he could possibly have had this discussion with Mrs. Nangle must have been after that, not only for that reason, but for this further very simple and obvious one, that Mrs. Nangle lived at Boulogne, and she only came over to this country and went to Tichborne in that very month of June. Roger Tichborne was at Tichborne from the afternoon of Saturday, the 19th, to the morning of Tuesday, the 22nd, and Roger first saw her there when he went down there on the 19th. He could not have met Mrs. Nangle at Mr. Hopkins's on the afternoon of Saturday, because they only got down to Tichborne that afternoon. Nothing could have been done on Sunday; and on Monday, if we are to believe the other part of the story, he was engaged with his cousin, Mrs. Radcliffe. That was the only day he could have been alone at Mr. Hopkins's. It is difficult to see how he could have been at Mr. Hopkins's that day, and had this discussion with Mrs. Nangle. Mrs. Nangle most positively contradicts it. Then he is asked: "Did you ever see her again?—I believe I saw her once after that. Q. Where?—In London. Q. Did you make it up, or did you part on bad terms with her?—To tell you the truth, I was never on very good terms with her. Q. You never were on very good terms with her?—No. Q. Did you part on bad terms with her?—I do not remember our parting: I do not think we parted exactly on bad terms. If I really did think so I should not have let her see it; I should not have openly shown it. Q. As far as all outward signs were concerned, did you and she part as friends, or as people who had had a difference, a quarrel?—I think at our last parting she did not know it would be the last, nor I neither. Q. I thought you said it was shortly before you went away?—I am speaking within six or seven months of the time I went. Q. Six or seven months?—I did not mean within two or three months, or two or three weeks. Q. You had had a conversation at Mr. Hopkins's some time before that; when was it after you had the conversation at Mr. Hopkins's that you saw her in London? How long before you went away was the last time you saw her? Six or seven months? Am I right in that?—Really, it is very hard for me to remember at this date. Q. I do not expect you to remember precisely, but about?—I think it was some two or three months. Q. Some two or three months, and the conversation about the will was six or seven months,



was it?—Yes. Q. May I take it that she knew you parted from her on indifferent terms or not?—I cannot tell you what she knew. Q. As far as outward signs went—you could not read her heart—did you part from her affectionately or coldly?—She knew I never had any very great love for her. Q. Did you part in that sort of way in which a person would part from a person whom they had no very great love for?—Yes, I think so.” Here again we have the defendant contradicted by Mrs. Nangle. She says that she and Roger were always on the best terms possible; nor, so far as we are aware, was there any reason why they should not be. They had not seen much of one another from the time Roger came to England, because, generally speaking, Mrs. Nangle lived abroad at Boulogne, where the Nangles had a house, and she did not come to Tichborne until the June of 1852; but there is no suggestion anywhere in any of Roger’s letters of dislike to Mrs. Nangle, and Mrs. Nangle says, on the contrary, they were always on the happiest terms.

Then with regard to this parting, and the supposition that they parted on cold and distant terms, according to Mrs. Nangle they never parted at all. When Roger Tichborne left Tichborne on the 22nd of June, 1852, Mrs. Nangle had not the most distant idea that they should not meet again. The reason that they did not meet again was simply this, that throughout the whole of the time that Roger Tichborne remained in England, or until within a few days of his departure, Mrs. Nangle was staying at Tichborne; but after the 22nd of June, 1852, owing to the unforeseen circumstances that afterwards arose, so far as the evidence and the correspondence show, Roger Tichborne never set his foot in Tichborne House again; therefore he never met Mrs. Nangle; therefore there was no parting such as the defendant suggests in that portion of his evidence which I have just been reading. The defendant, indeed, says he thinks he saw her once again in London. But Mrs. Nangle denies that she ever saw him again after he left Tichborne. Therefore, as regards this episode with reference to Mrs. Nangle, I am afraid it is not merely a matter of defective memory, but it is a statement as to which, if you believe Mrs. Nangle, that there never was any conversation about a will, or pressure put upon him by her to make a will, which he refused to do, still less any dispute about it, and that there never was any coldness between them in consequence, and that there never was a parting, as between people on distant and cold terms with one another, the whole of that must be a pure invention from beginning to end—and, if so, an invention which could only have been resorted to for the purpose of leading the jury on the former trial to the belief that Mrs. Nangle had taken part against him, and refused to acknowledge him as Roger Tichborne, because he had offended her in this matter about the will.

This, I think, Gentlemen, is all I have to say to you on the subject of Roger Tichborne's knowledge of the family property, and Roger Tichborne's disposition of the property. You must judge. It seems to me one of the most important issues in this case ; inasmuch as one of the very best and most conclusive tests by which the identity of one man with another can be judged of is, whether in respect of a thing so all-important to a man as the knowledge of his property, and the disposition of the estates of which he was the heir, and to which he would be afterwards entitled, and especially the dispositions of such estates effected by himself by deed or will, the knowledge which you may fairly and justly believe the real man to have possessed, is or is not possessed by the man who appears and claims to be the same person as the person who possessed that knowledge and made such dispositions.

Before I quit the subject of property for one of a wholly different character, there is one other matter on which I ought to say a word. When Roger Tichborne entered the army a sum of 2,000*l.* was applied to the purchase of his commission and his outfit. The defendant was asked from what source this money was obtained, and his answer was that it was taken from his mother's fortune, and he added that he gave her a charge on the Doughty estate for the amount. The first part of the statement is true, the latter part is without any foundation. The money was taken from Lady Tichborne's fortune with the assent of her husband and the trustees, a fact which was of course known to her. But no charge whatever was created on the Doughty estate in favour of Lady Tichborne in consideration of the advance. The deeds connected with that property have been produced on these trials. There is no such deed. What did take place was this. By the terms of his mother's settlement, the money settled on her was to go to her children in equal shares. By an arrangement entered into on the advance of this money, Roger, who was to inherit a large fortune as the head of the family, renounced in favour of Alfred all claim to his share of the settled fund. Aware of some arrangement having been made on the advance, but not knowing what it was, the defendant hastily concluded, or, at all events, rashly ventured on the assertion, that he had given a charge for 2,000*l.* on the Doughty estates, whereas nothing of the sort was done.

I pass away from the subject of property altogether, and I come to another part of this inquiry, which is, if possible, still more important—I mean the relations of Roger Tichborne with his cousin Miss Doughty ; and I propose to deal with those relations, in the first instance, as entirely separate and distinct from the question of the sealed packet. I take the knowledge of these relations—and I pray you, Gentlemen, to give me your undivided attention while I deal

with this subject—to be one of the crucial tests, and one of the points to which your attention should be most anxiously directed. I say that it is one of the crucial tests, and for this reason: that where a man has had a deep and passionate love for a woman which has ended in disappointment, such a painful phase in his life will necessarily leave impressions and recollections on his memory which it is not in the power of time or altered circumstances ever to obliterate and efface; and therefore it seems to me that one of the most effectual tests of the identity of the defendant with Roger Tichborne will be the degree of memory and knowledge which he manifests with reference to so important a subject.

Now just let us recall to mind what the relations between Roger Tichborne and his cousin Miss Doughty were. We know that the cousins first met, after the period of childhood, in the year 1849, when Miss Doughty had returned from school, or from the convent where she had been placed, and came to reside permanently at home in the month of June in that year. They had not been long together before Roger conceived an attachment for his cousin—in other words, fell in love with her—and he took the opportunity of Lady Doughty coming to town with her daughter and husband, on their way to Scotland, in the August of that year, at the time when he was studying in London, to reveal to Lady Doughty, under the seal of secrecy, and in strict confidence, the fact that he was in love with her daughter. It is very clear from Lady Doughty's letters of that date, that if she did not encourage this attachment, she certainly did not discourage it. She writes to him constantly time after time, and in her letters she refers to the secret which he has confided to her, and speaks in terms which would certainly lead him to suppose that his attentions to her daughter were at that time by no means displeasing to her. It is perfectly true there was the objection of near relationship, an objection especially cogent with persons of the Roman Catholic religion. But Lady Doughty seems to have thought that in many respects it would be an eligible match, and though she had not made up her mind to the union taking place, she certainly did not at that time in any way set herself in opposition to it. Roger Tichborne joined his regiment. He came back in the winter of 1849-50, and he came of age in the first week of January, 1850; and on that occasion certain festivities took place, and he seems to have manifested then, what had not occurred to Lady Doughty before, a disposition to drink too much. Then we find Lady Doughty, when he had gone back to his regiment, writing to him seriously on the subject, and from that time until the end of 1851, we have constant references to it in her letters; and we find arising in her mind an uneasy misgiving as to his habits, and as to the probability of his getting over this unfortunate tendency, this propensity to drink, and hesitation as to whether, looking to that, and to other habits he



had had, he would make her daughter such a husband as she would desire that daughter, for her happiness' sake, to possess. And so we pass through the years 1850 and 1851. In the middle of the year 1851 we have Roger Tichborne coming to pay a visit at Upton, where the family then were, and where he again sees his cousin; but Lady Doughty seems at that time to have given him very little encouragement indeed, and there were other gentlemen staying in the house who appear to have paid more or less attention to Miss Doughty. There was one whose attentions Lady Doughty seemed disposed to encourage; and, at all events, did so far encourage as to excite very strong feelings of jealousy and dissatisfaction on the part of Roger, as we know from his letters of that date to Mr. Gosford; so that we may fairly say that in the middle of 1851, on his return to his regiment, after that short visit to Upton, Roger felt very little confidence in the eventual success of his suit; but at the end of that year he obtained fresh leave of absence, the usual leave which an officer gets once a year for a couple of months, and he comes to England, and goes to Tichborne. And whatever his opinion may have been of his cousin's inclination to listen to other gentlemen's addresses, or some other gentleman's addresses, at the earlier period when he was visiting at Upton, I think there can be very little doubt that on his coming back to Tichborne her manner very soon satisfied him that his feelings were not confined to himself, but were reciprocated by her. We know what happened on that occasion. We know that, fluctuating between hope and fear, conscious that his cousin did not dislike him, but on the contrary received his attentions with pleasure and satisfaction, but aware of the many difficulties and obstacles that might present themselves to the union which he desired, he left with Mr. Gosford a paper about which Mr. Gosford has spoken, and in which was recorded his vow to build a church, if his marriage with his cousin should take place.

I am not at the present moment anticipating the question whether that was the only document which Roger Tichborne left with Mr. Gosford, or whether the defendant has stated what is true or not in saying that he left with Gosford a paper containing the very different instructions which he says that paper contained; but that a paper was left with Gosford recording a vow to build a church is perfectly clear from the contents of the two letters, one to Mr. Gosford, in which he says, "I will not build a church unless under the circumstances which I have left with you in writing," and the other a contemporaneous letter to Mr. Slaughter, in which he says, speaking with reference to his will, that, besides his will, "his private wishes and intentions, as he desired them to be carried out, if he lived, he had confided to Mr. Gosford." Those two letters, taken in conjunction, show very clearly that he had left a written paper with

Mr. Gosford, and the first shows plainly that in it there was recorded his intention with reference to building a church, if the circumstances should occur which he stated in the paper so left.

Now we know that at this time the attention which he was paying to his cousin, and his view of marrying her, became known to her father, having in all probability been brought to his knowledge by Lady Doughty. We know from a letter of Roger that at this time he again spoke to Lady Doughty on the subject, possibly in consequence of his discovering the state of Miss Doughty's feelings towards him, and it is likely that his attentions towards her became more marked, as would naturally be the case between a young man and a girl whom he desired to marry when he found that his affection was returned. Lady Doughty no doubt thought things were going too fast, and she had by no means made up her mind to the marriage, but at that time seemed to have a strong tendency and disposition to oppose it, a disposition which is exhibited in her letters throughout the course of 1851. She probably held commune with her husband about it, reminded him that their daughter and Roger were first cousins, and made objections to the match. Sir Edward Doughty shared her feelings and her objections to it, and he summoned his nephew to his presence. You know what happened. Lady Radcliffe tells us that, on a Sunday morning, the 11th of January, 1852, when the bell was ringing for church, Roger was summoned to his uncle in the library—and in this she is confirmed by Roger's own papers—and we know from the papers which were left by Roger with Miss Doughty, and which cannot deceive us, what passed. His uncle said that he objected to a marriage between his daughter and Roger on account of their near relationship; that he would not consent to the marriage, and that it would be much better for the two cousins, between whom this growing affection had plainly sprung up, to be separated, in order that the thing might at once be put an end to; and he, therefore, requested that for the sake of every one Roger would leave the house the next day, and accordingly he did leave the house the next day. What his feelings were upon his uncle making this communication to him is disclosed in the first paper which he gave to Miss Doughty. It has been read more than once in this trial. I daresay it is fresh in your recollection, and I need not read it again. But no one, I think, who does read it can fail to appreciate the strong, passionate love that Roger Tichborne, however cold his nature might otherwise have been, had conceived for his young cousin, or how great was the distress and anguish of mind and heart he underwent on having his relations with that cousin suddenly and abruptly put an end to. It is not only from that paper, but it is from the contemporaneous correspondence also that one is enabled to see what was at work in his mind. Writing

to Mr. Gosford the day after leaving Tichborne, he says, "Excuse this short note. I am in such a low state of mind at present that I don't know exactly what I am writing." Writing to Gosford from Paris, he says: "I little expected, three weeks ago, that my visit to Tichborne would be cut short as it has been; but, however, such has always been the case with me ever since I was born. It is not new to me but not less painful." It has been said in the course of this case that there was no reality in the love of these two cousins for one another. Why that should be said I am sure I do not know, but I can only say this, that reading the document to which I have referred, and reading the language of those letters, in which he was pouring out his feelings to a confidential friend, I cannot bring myself to doubt that this love was a real love, a real and sincere attachment, which if it had been allowed to run its course, and to end in a union between these two persons, might have made of Roger Tichborne all that could be desired. If he had evil habits a good and loving wife might have weaned him from them; might have made him a good domestic husband and father of a family; might have induced him to settle quietly down, and lead the happy and contented life of an English gentleman, blessed with everything that can make life pleasant, and at the same time make a man's life useful in the sphere in which it has pleased Providence to place him. It was destined not to be. It was frustrated. I think the more the pity, because there was good in this man, and a good wife might have brought out that good, and exterminated the evil.

Well, it was thought at that time that there was an end to everything in the way of courtship between the two cousins, and no doubt this was perfectly well known to the establishment at Tichborne. A thing of that sort, the sudden and abrupt termination of the courtship of the young heir addressed to his cousin, the sudden and abrupt termination of the visit, and the exhibition of tears and regret on the part of the persons principally concerned, which I dare say took place—one of the witnesses has told us that he saw them kissing and crying before they parted—all that very soon gets talked about. I do not know how it is, but certainly it is the fact, that there never is anything which deeply interests the interior of a family, especially if you do not wish it to be known beyond the walls of your own immediate part of the house, but what is known in the servants' hall almost as soon as you know it yourself. There is a sort of mysterious communication between up stairs and downstairs, which one cannot always fathom or get to the bottom of, but which every body knows to exist, and there can be very little doubt that when Roger Tichborne had to go away on account of the—I will not say displeasure, because he manifested no displeasure, but—the dislike of Sir Edward Doughty to any countenance of their then existing relations, the fact was



known throughout the family within a very short time afterwards. But it so happened that this, which was thought at that time to be the final termination of the intimacy between Roger and his cousin, was not destined to prove so. Before the end of the month, Sir Edward Doughty was taken with an illness which everybody supposed to be a death illness, and Roger, as his heir and his near relative, was sent for that he might take a last farewell of his uncle, and receive his dying blessing. When he came the uncle was supposed to be on the point of death. We know that was so from a letter written by Roger himself to Mr. Seymour, in which he says that the medical men have entirely given Sir Edward up, and that he cannot last twelve hours. He writes also to his mother, saying that his father must not lose a moment in coming over, if he wished to see Sir Edward alive. In short, Sir Edward Doughty's state was considered desperate. We know what further took place. The return of Roger of course brought the two lovers together again, and revived their feelings towards one another; and then they thought of the possibility of their future union, but could not bear the idea that her father should leave the world without leaving his blessing on that union, if it should ever afterwards be accomplished; and Miss Doughty suggests to Roger, or it occurs to him himself—at all events they agree—that he shall go and make a last appeal to his uncle, supposed to be then dying, and implore him to leave his blessing upon their marriage, if that marriage should afterwards take place. Accordingly, Roger goes and sees his uncle, and makes this appeal to the supposed dying man, and the uncle says, as Roger himself has recorded: “Well, if you really love one another, and that shall continue until my daughter is of age, and you then get your father's consent and the dispensation of the church—if that should be the state of things at the end of that period, I shall look upon it as the will of Heaven that you should be united, and I give my consent to the union.” This having been said, Roger would naturally consider the thing as settled. For, though it was, no doubt, subject to the condition that both should remain constant to the troth which they had more or less at that moment plighted to one another, it would not occur to a lover to doubt that that condition would be fulfilled. He had the assurance of his uncle that, if at the end of that time they both desired that the marriage should take place, then there should be no difficulty about it. Even Lady Doughty herself seems to have been for the time an assenting party. It must have been made clearly manifest to her at that time that her daughter's affections were engaged, and loving that daughter tenderly, she may have given way for the moment. But there was the same difficulty that there was before, her want of confidence in Roger's habits. She had learnt, from some quarter or other, that he still

continued to indulge in stimulants, and unfortunately on one occasion during the time he was staying in the house, while sitting up with his uncle, he seems to have taken too much, and the result was that he showed signs of being the worse for drink. Of course that created more or less a sensation, but Miss Doughty appears to have expostulated with him, and he gave her a written promise that he would never touch spirits any more. And after that he seems for a time to have stuck to his promise, and to have abstained from drinking, and turned over a new leaf, and sought to become in this respect a reformed man. And for a time Lady Doughty seems to have believed in his assurance of reform, and to have been disposed to allow the conditional engagement between these two cousins (because it really amounted to that) to hold good. She writes to him in February, after his return to his regiment, in terms which quite convey her assent to the relations which existed between the two cousins. "My dearest Roger"—after one or two observations she says—"Be assured of the anxiety I feel to hear from you, and pray name if your cough is better, and do *take care* of yourself for all our sakes; our sad house is as when you left; and *each* feeling our sorrows; it may be a comfort to you to know that your uncle highly appreciates your honourable conduct on this occasion, and though we both feel deeply the stern conduct (from a sense of duty) we have pursued, that we had no other line of conduct to follow with *justice to you both* at present, and the future is in the hands of God—oh dear Roger let all that has happened be an *addition*al motive to you to avoid that vice, which ruins health and entails misery and must shorten your days—do feel at least how fondly we have looked to your taking the first position hereafter in this family. You are constantly in my thoughts of course sorrow oppresses us, but y<sup>r</sup> uncle and cousin send their affect<sup>ate</sup> love & I am ever your attached aunt." In another letter of February 25th, she exhorts him to keep up his courage in order to carry out his good intentions. "Do dearest Roger keep up your courage & remember the *efforts* are worth making both for what you wish to gain in this world, and still more for the far *far* greater rewards in the next." That, as it would seem, clearly has reference to his desire to marry her daughter, there being nothing that Roger then wished to gain in this world except a union with his cousin. In a letter of the 4th March Lady Doughty writes: "Be assured how obliged I feel by your *own* expression that you hope soon to be all I could wish to see you." He had written to assure her that he had reformed his habits, and was no longer drinking. "I have indeed prayed and longed to see you filled with Religious and noble feelings & with steady habits, so that All around you hereafter may respect love and bless you. It is ordained by God that a wife should look up to her Husband. Oh how deplorable the fate of that being whose life is to be spent tied to a man addicted to

degrading vices so dear Roger I trust to your sincerity"—He had assured her of his reform—"You never yet have deceived me I believe. God grant that I may ever feel that I am your affectionate Aunt."

I think those letters very plainly show that if she could have been convinced that Roger Tichborne would have thoroughly reformed his habit of drinking, there would have been no difficulty with regard to Lady Doughty's assent to the marriage at a later period. But in the meanwhile officious persons told her that Roger was still in the habit of drinking, and we shall see what that led to shortly afterwards. When the regiment returned to England, in the June of that year, of course Roger came with it; and Lady Doughty and Miss Doughty coming to London, in the course of that month Roger came up to town, and saw them on the 9th of June. And it would appear that upon that meeting with his aunt and cousin Roger was struck with some show of reserve and coldness on the part of the aunt, and possibly on the part of the cousin, to whom her mother may have said she must not be quite so free with Roger; that there was no absolute engagement between them; and that she must be more reserved in her conduct towards him, especially now when they were before the world in London, when other people would have the opportunity of seeing their behaviour to one another, and from it might infer that there was an absolute and positive engagement between them. I gather that to be so from the letter of Lady Doughty, to which I am about to call attention, and which is obviously founded on some expression on the part of Roger, when he was in town, of surprise, and possibly of regret, at observing that the manner of his aunt and cousin was not so familiar and unreserved as it had been on the occasion of his preceding visit in February. She writes to him on the 11th of June, and after saying "her heart had bounded with joy to see him again," she says: "Now to answer your question as to our being reserved to you? and secondly as to the reports I have heard? I feel the difficulty of answering because we are all in a false position towards each other which ought to be cleared, no party really knowing the *exact position* or *present feeling* of each other, nor can this be cleared partly by anyone but yourself—& my part is most *difficult* & I must now trust to your *honourable* feelings and write the truth. The world has given out so decidedly that you and your cousin are engaged that though we contradict it (for you know there is no engagement)"—I cannot say I quite agree with that in the unqualified terms in which it is put, because the paper written by Roger Tichborne as to what passed between him and his uncle clearly shows that it came to this, that although Sir Edward did not consent to their union then, he certainly promised that if their attachment subsisted until the time of his daughter coming of age he would then



consent; and from the letters of Lady Doughty, and the evidence of Lady Radcliffe, I gather this, that the only further condition that Lady Doughty in her mind attached to their future union was, that Roger Tichborne should show a permanent reform in respect of the habit of drinking, to which certainly he had a considerable tendency. Lady Doughty continues: "Though we contradict it (for you know there is no engagement), still it has prevented any one coming forward, and in fine the report has met us everywhere, and must perhaps have caused reserve. Now, in reality, neither of *you* have made up your minds to a final decision; but it would be but sincere and honourable, and a *guide* if *you* candidly told *me* (*in confidence*) your wishes; recollect, however, we have no reason as yet to think that the resolutions you made in the winter have been kept. It is not keeping a resolution against drink if any *persons* or *circumstances* have power to draw you into it, moral courage should rise above the temptation. I have no reports to repeat more than of course your illness has been said to have been caused by smoking, and the usual attendant, *drink*"—You will recollect she had received a report of his having been ill, that she wrote to him about it, and it made him very angry. He denied that he had been ill, and complained of persons spreading about such reports without having taken the trouble to ascertain the truth of them—"You deceive yourself," she says, "I fear, and in reality take more than you think—be that as it may, without a real religious feeling to guide you, you will throw life away and ruin your own happiness in this world and the next. Still, dear Roger, though your constitution has received great shocks—a *resolute* change of habits might save you, but it must be, be assured, *entire change*—it is a *crisis* in your life—do reflect, and when you speak to me do it *openly* and *sincerely*, this I feel your own sense of honour should dictate, and then be assured I am your affectionate aunt and sincere friend, KATHERINE DOUGHTY. When you write or speak to me it should be without reserve and with perfect candour; the future is too much at *stake* for mystery." It is difficult quite to understand that letter. Possibly it may have been intentionally ambiguous. But what it seems to me one may gather from it is this—that she would rather that the marriage should not take place than that it should. The inclination of her mind was against it. She was not prepared, on the other hand, to break off this conditional engagement, and to set at nought the conditional promise which her husband had undoubtedly given; while, on the other hand, she felt her confidence in Roger's promises of reform so shaken, that she did not desire that the marriage should take place, lest he should prove a drunkard, and so her daughter's happiness should be destroyed. That seems to have been the state of her mind; but, on the other hand, she did not wish to break off with Roger altogether, and she

desires him, therefore, explicitly to state what his own wishes and desires are—that is to say—“either set my daughter wholly free, and let us hear no more about this, or tell me what your wishes are, and then the existing relations may remain between you, subject to this, that my daughter is to be entirely free and unfettered, if in the course of the next two years she should change her mind. If she sees anyone she can form an attachment for, and who would be an eligible match for her, she is to be at liberty to marry him; but I want to fix you, Roger, and to know what your intentions and purposes are.” On the receipt of this letter Roger seems to have thought himself hardly treated, as, indeed, I think he might well do. He says, in answer, that he has never told anybody what engagement might or might not exist between him and his cousin. He reminds his aunt that he had told her in the winter what his wishes and intentions were. He says, “I had been long to think about it and to take my final determination. I studied my own heart and feelings. I saw quite plain that I had habits which you or anybody else could not approve of. I knew quite well that I had strength of mind to correct those bad habits, though the task was not an easy one, but I thought twice over before I could make up my mind to let you know what my feelings were.” Then he says, “Since I came back from leave it has been my daily study to try to improve. I don’t drink anything to what I used to drink formerly. I have, I can say, improved in many other respects. What has taken place during the latter part of the time which I spend at Tichborne you will, I dare say, remember it, so as to make it unnecessary for me to write it over again. What affections I have felt for my cousin when I was at Tichborne, instead of decreasing, are much stronger now than they ever were. Whatever the case may be now or in future I shall always be but too happy to do anything to please and oblige her in any way which I have in my power, though I shall be most likely far away very soon.” Then he adds, “I am in hopes of making an exchange in the 12th Lancers at the Cape of Good Hope before long. I shall remain there most likely two if not two years and a half. If my cousin has not changed by that time, then what can be done will be decided at once. I hope and trust, my dear aunt, that you think that I have acted in an honourable manner, at least such has always been my wish.” You see that he does not exactly say there that he pledges himself that if his cousin shall remain constant to her attachment to him, he will marry her at the end of the three years: he implies it; but it certainly is not explicitly stated; but then he adds this: “If you wish me or if you like to give out yourself any final decisions about me and my cousin, I shall do so, or you are at liberty of doing it yourself, but, however, I leave all to you.” That would seem to me to imply “if you like to say I am engaged

to my cousin say so; if you like me to say so I will say so;" but he does not give in to what appears to have been, I cannot help thinking, her purpose and desire, namely, that he shall pledge himself finally, without the engagement being openly acknowledged or a corresponding pledge being given to him from the other side.

That being the state of things between the parties at that time, having got a week's leave of absence, on the 14th he comes up to London. He stays in town with his aunt and cousin until Saturday, the 19th, and then they go down to Tichborne in consequence of being summoned thither by the intelligence that Sir Edward Doughty had been taken ill. The alarm proved a false one. Sir Edward Doughty had only had some temporary attack, and was comparatively well when they arrived at Tichborne. However, having gone down to Tichborne, they did not go back again to town, but remained at home, and Roger remained with them till the 22nd of the month, and on that day—an eventful day, as it proved, in the history of Roger Tichborne—before he returned to town, he had an interview with his uncle. It appears that he and his cousin had come to the determination that before he left to return to his regiment, he should make an appeal to his uncle to convert the conditional assent which he had given into a positive one, and that instead of merely consenting to their being eventually married at the end of the term he had prescribed, he should consent to their marrying at once. Roger saw his uncle, but could not succeed in inducing him to assent to his entreaty. Lady Radcliffe gives us an account of what happened. They were walking up and down, together, she says, by the river side, in front of the house, talking about their future hopes and prospects. He told her he had made this appeal to his uncle in conformity with the arrangement they had come to, but that it had been unsuccessful; that his uncle abided by what he said on the former occasion, and had refused to abridge the probationary period which he had made the condition of their future union. Then she says "he produced a paper, and said, 'I have written a promise that I will fulfil, and I have given a similar paper to Gosford;' and he gave it to me, and we read it over together." That paper is produced, and there cannot be the slightest shadow of a doubt that it is the genuine handwriting of Roger Tichborne. It bears date the 22nd June, the day that he left Tichborne to rejoin his regiment at Canterbury. "Tichborne Park. I make on this day the promise that if I marry my cousin, K. Doughty, this year or before three years are over at the latest, to build a church or chapel at Tichborne to the Holy Virgin, in thanksgiving for the protection which she will have shown us in praying God that our wishes might be fulfilled. R. C. Tichborne, June 22nd, 1852." It bears a memorandum of Lady Radcliffe's, a melancholy memorial of the past, written upon it. "This was



written the last day I ever saw Roger." He left that afternoon, and, according to her account, that was the very last time she ever saw him; and so ends this romance, which, as I said just now, if it had been allowed to run its course might have led to a happy union between these two parties, but which, if Roger Tichborne is not before us in the person of the defendant, ended in Roger Tichborne's withdrawal from this country as the means of drowning his sorrow and regret in foreign travel, and which ended in his premature death, if it be true that he did in reality go down when the 'Bella' foundered. That he carried with him to the distant part of the world to which he went the love for his cousin which had animated him here, is, I think, a thing we cannot doubt. He writes in a letter to his aunt, Lady Doughty, from South America, that he is just as much attached to his cousin as ever. And there is not a letter that he writes to Gosford in which he does not advert to his cousin, and seek to obtain information about her; and if he speaks as he does with an apparent calmness about the possibility of her marrying someone else, and the likelihood of his seeing announced in the papers in the course of the next London season that Miss Katherine Doughty has married, one cannot but feel that it is an assumed calmness and indifference which does not really exist at the bottom of his heart, and that in truth this fatal attachment was still clinging to him, and that no change of scene or new form of life could possibly obliterate it from his memory and his heart. He might with truth have said, with a very little change, in the exquisite lines of Goldsmith—

"Where'er I roam, whatever realms I see,  
My heart, untravell'd, fondly turns to thee;  
Still to my cousin turns with ceaseless pain,  
And drags at each remove a lengthening chain."

I dwell on this part of the case for this simple reason: I believe I am doing justice to what were the sentiments of Roger Tichborne towards his cousin. I believe that I am only portraying truly and faithfully the feelings he entertained towards her—feelings the memory of which never could be effaced. The heart's wounds leave scars quite as deep and lasting as those which steel or fire impress upon the surface of the outward form. If a man had passed through these passionate emotions, which this correspondence, and these papers, and the evidence we have had before us, I think vividly display, he could never have forgotten them in after-life. And therefore it is to my mind a crucial test of the reality of the claim of the defendant to stand before us as the living representative of Roger Tichborne, to see whether he has a remembrance—a real, substantial remembrance—of all that passed between Roger and his cousin, and this quite independently of all question of the sealed packet.

To that I shall come as an entirely separate and substantive part

of this case. I am looking now simply to the relations between the two cousins which the correspondence and papers, all of which are genuine, and are not likely to deceive us, portray, and render perfectly clear and distinct to our understanding. Then that brings me to the consideration of what the defendant has said about it; but before I come to that I must call your attention to the letter by which it is supposed that an entire termination was put to the position in which Roger Tichborne stood relatively to his cousin, but which letter I think has certainly been strangely misconstrued, if that is supposed to be the effect of it. It is the letter of the 1st of July, written by Lady Doughty to Roger Tichborne, after his departure from Tichborne. He had, as I have been recalling, applied to his uncle to allow them to be married at once, or at all events, in a short time. That proceeding was, I think, a fatal mistake. If he had allowed things to remain undisturbed, the probability is that all might have gone on smoothly, and that Miss Doughty might have remained constant and true to the attachment which she had not disguised from Roger, and that Lady Doughty would have had no opportunity of interfering to frustrate and disappoint their hopes. He made this appeal to the father. Lady Doughty saw that any appeal of that kind might precipitate matters and bring things to a termination much more hastily than she was disposed to permit. She takes advantage of that to write to him the letter of the 1st of July. I think it is not at all impossible, and her letter would rather lead one to that supposition, that he had applied to her also, and had told her he had been imploring his uncle to allow them to marry at once, and that he made an appeal to her to further his wishes and views in that respect, and I do not doubt that she promised to write to him, because he evidently was expecting a letter from her on the subject. He writes to Mr. Gosford and says that he is expecting a letter daily and hourly from Lady Doughty, and, as you will remember, he uses the expression that he hopes she will not be "too diplomatic," adding that she is "a very bad diplomatist, and he can see through what she is doing." No doubt he felt perfectly well that she was trying to fix him to an irrevocable pledge, which, once given, he could not as a man of honour break, while she desired to leave her daughter free to profit by the chance of any other marriage that might present itself, where the marriage might be equally eligible, and where the suitor might possibly be able by his attentions to banish from her mind her recollection of her cousin, and her attachment for him. The expected letter comes. On the 1st of July Lady Doughty writes: "I thank you for your kind letter, and should have answered immediately, only your uncle wished for full time to consider over all that has passed, and though it is a painful task to me to write what may give you pain, it is no use delaying longer without telling you that he says he

sees no reason to change from the decision he made during his illness, 'that of not giving consent till our daughter was of age, and that she must be at perfect liberty to marry any person; in fine, that no engagement whatsoever should take place between you,' added to our considering *her* too young to decide upon a choice that involves going contrary to the wishes of parents (we presume on *both sides*), and which is against the rules of the Church." Now, the decision which she refers to as having been come to by Sir Edward in his illness means, of course, the illness in the previous February. There had been no illness since that at which any such decision had been arrived at; therefore it is clear it must be taken to be the decision he had arrived at in February. She goes on to say that Roger has not given any real proof of change of habits, which has been the cause of danger to his life, by bringing on a dangerous illness, and which would certainly bring on a relapse. She says: "You have not given any real proof of changing *habits* that have been the cause of endangering your life by bringing most serious illness, and which without resolutely and determinately giving up will *certainly* bring on a return of the same illness. Now without a long-continued proof of these bad habits being entirely conquered, no parent (even if there was no relationship) would think themselves justified in giving their child to a person, who neither from a sense of duty to God, nor the attachment to their child, could conquer habits that would be the ruin of the happiness of both; these, then, are our objections, and it is best you should clearly know them. You asked that our child might have permission to write to you; we certainly see great objections to this, for being under age *she* cannot *act* without the consent of parents, therefore, the less communication you have under these circumstances the more free it leaves both. Now, dear Roger, though I have fulfilled the duty that devolves on us, you are, of course, at perfect liberty to act in this matter as you consider best for your own happiness. I only ask that you will write and tell me your decision, after you have well considered over this letter, and that you will not take any *precipitate* measure, but write clearly your own views in a letter that may equally be read by your uncle as well as myself." Gentlemen, in substance it amounts to this: "You have applied to your uncle for his consent to your immediate union instead of waiting until the time he has prescribed. He will not depart from the decision he came to before; he will not abate one jot of the conditions he then imposed; you must wait until your cousin is of age, and then we must see if both parties are of the same mind as they are in at present, and that your habits are regular, that you are likely to be a good husband and insure the happiness of our daughter. Subject to this things may remain as they are: but with this further condition—our child is not to be



considered as bound to any engagement towards you if she sees anybody else that she can take a liking to, and who we should think would be an eligible match for her. If she does she is to be at liberty to marry him. At the same time, I should like to know what your views are on the subject. Do you intend to abide by what you have said? Will you pledge yourself that at the end of that period, if she should not in the meanwhile have attached herself to somebody else, and we are satisfied of your entire reform, you will undertake to marry her?" He did not choose to do that. He thought that was "diplomatising" too much, and a very unfair thing to exact from him, and he refuses to give such a pledge. He writes to Gosford: "It is quite plain, if I can judge by a letter which I received this afternoon from Lady Doughty, that she has at last gained her point. I was sorry to see in her letter some remarks to which I never thought before I was entitled to. It is the first time, so far as I can remember, in such an instance as this, when mere reports were believed in preference to my word of honour." Then he complains of persons who spread about reports of this kind, and, lastly, he requests Mr. Gosford to send him a list of all the things he has at Tichborne, "that I may judge," he says, "what is fit for me to take abroad, and do away with the rest, as it is not my intention to go back to Tichborne for a long time to come."

A few days afterwards he goes to the election at Poole, and, as you will remember, writes to Lady Doughty asking her to meet him as he passes through Winchester on his return, evidently with the object of talking with her on the subject of her letter. "So much more," he says, "can be done in conversation than by letter." But Lady Doughty misses him. She does not come to the time: he assumes she does not intend to come at all, and goes on by the next train. She writes to say she is very sorry he had gone on without waiting for her, and then she adds: "In total uncertainty of your state of feeling, I can only say that had we met I must still have referred you to my last letter, as Sir Edward's opinion remains unchanged"—That is, that things should stand upon the footing of the decision which he had come to in his former illness in the month of February—"If you cannot write or *speak* openly, write to Mr. Gosford to tell us; and the report is now so widely circulated that it must reach your father's ears, and therefore would it not be best for you to let him know your real feelings. Be assured that beyond the duty we know we owe to you and to our child, that on any point you will ever find both your uncle and myself sincerely attached to you," &c. He thereupon writes, without any precise statement as to his intentions, and without giving any positive pledge, in this way: "I should feel sorry, my dear aunt, if you thought that I kept my cousin under any kind of engagement

towards me. If she thinks for a moment that she can be happier by marrying somebody who she fancies, let it be so. I have always been uncommonly fond of my cousin (as you perhaps know) ever since I saw her the first time, but I never loved her but for herself only, and if I see that she will be happy by marrying, I will be the first to encourage it, and if in some future time I can be of any service to her, it will always be a great pleasure,"—and so forth—"moreover, what has taken place will never be told to anybody whatever by me as long as I live. As far as I am concerned, it is fully my intention, if my cousin marries, to make the army my profession, go abroad with my regiment (there is a strong rumour that we are to go either to Australia or India in spring). I care little where my regiment will be sent to. I shall go with it to any part of the globe where it may be sent to. I am in hopes that I have answered your letter as you wished it. I hope that I have neither offended you nor my uncle, if I have done so I hope that you wont be offended as it has never been my intention to offend you in the least manner. Believe me whatever the case may be your very affectionate nephew, R. C. T. P.S.—It is not my intention to go to Tichborne again for a long time to come unless you and my uncle express a wish to see me either now or during the leave, if I apply for it during the winter."

Did he ever go there any more? Lady Radcliffe swears he did not. Lady Doughty swears he did not. Mrs. and Miss Nangle were staying in the house, and they say he never came back after the 22nd of June. Mr. Gosford and his wife, who, if he had gone back to Tichborne, must in all human probability have known of it—he never would have gone there without seeing Gosford—both say he never came there any more. What did take place we know pretty well. He intimated an intention not to go again to Tichborne except he had an express invitation from Sir Edward and Lady Doughty. He never had any such invitation. Lady Doughty did not at all wish him to come. Although she did not in terms break off the existing relation between these parties, she did not wish them to come together; she wished her daughter to form some other attachment, and to marry somebody else. They never asked Roger to come back to Tichborne. He felt that he had been hardly and perhaps cruelly used; that his aunt, without sufficient foundation, upon the assumption that reports that she had heard about his habits were true, and not believing in the reform which he knew to be real, was holding him at arm's length, and keeping him away from her daughter, and he resented this state of things, and shut himself up in a sort of sullen, moody silence, and kept at a distance, and would not go to Tichborne, although he wished very much that they would expressly invite him to come back, so that the former

relations should be renewed; but they did not invite him: and then the thing that occurred to him was to get leave of absence, or to leave the army, and take a hunting-box in Hampshire, and to hunt in that neighbourhood—probably with a latent hope that this would lead to a renewal of the previous relations. “No,” says Lady Doughty, “I object to that. If you come into this neighbourhood, either you must come to Tichborne, which would be objectionable in two points of view—firstly, that it will renew the intimacy between yourself and your cousin, which we wish should quietly subside, and in the second place, because everybody would then understand, although we contradicted the fact, that there was a subsisting engagement, and the result would be that no one would come forward who might otherwise be disposed to seek my daughter’s hand. On the other hand, if we do not allow you to come to the house, then there will be all sorts of gossiping reports and rumours, and we shall not know how to explain why we do not ask you to the house, where, before, you have been always so welcome and so hospitably received; therefore you had better keep out of the county altogether.” On this footing we find the correspondence going on all through the month of October, Roger trying to persuade them to withdraw their objection to his taking a hunting-box in Hampshire, saying first it shall not be within twelve or fourteen, then fifteen or twenty, then twenty or thirty miles; that he is going to bury himself in obscurity; that he goes out nowhere, consequently no one will be any the wiser for his being in that part of the country. But Lady Doughty stands to her text, and she resists to the last his coming anywhere in the neighbourhood of Tichborne, or in the neighbourhood of persons with whom they were on terms of intimacy and acquaintance. So things remained until the middle or close of October, when it occurred to Lady Doughty that, as they had not succeeded in letting Upton, the best thing to do was to offer it to Roger as a residence, which they did, and Roger accepted it; and on the 28th of October, having obtained leave, prior to his retirement from the army altogether, he went to Upton and occupied Upton for some period after that.

That brings us, therefore, to the end of the month of October. It will be a question by-and-by whether Roger Tichborne ever met his cousin after having gone to reside at Upton. I took you through the letters the other day. I will briefly give the dates of them again, and I think you will see that from the time he returned to Canterbury on the 22nd of June, on the expiration of his week’s leave, he never left Canterbury for a single day, till he went to Upton, except upon one occasion when he went up to London to meet his father. With that exception he never left the quarters of the regiment even for a day until he went to Upton, where he



arrived on the 28th of October. We shall hear from the defendant (for so he states) that Roger Tichborne, either before or after he went to Upton, was hunting in Hampshire, and that on one occasion when he was hunting in Hampshire, he met his cousin, and that then a conversation between them took place which led to the sealed packet, on the subject of which I shall have to call your attention to the facts and the evidence further on.

In the meantime, with reference to these relations between Roger Tichborne and Miss Doughty, of which I have been talking, it is essential to see what the knowledge and memory of the defendant is. He was examined by his own counsel on the subject, and the following were the questions and answers: "How many times did you go down to Tichborne before you actually sold out of the army in the course of that year; that is to say, in the year 1852?—I cannot say how many times. Q. Well, several times?—Yes. Q. I think you have already told me that in the year 1850 you had met Miss Braine, and also met Miss Doughty?—Yes. Q. Did you also meet Miss Doughty in the course of the year 1852 while at Tichborne?—Yes, I believe so." Let me invite your attention to what follows. "Were you at all intimate with that lady?" asks Mr. Giffard, in very mild and measured terms. "Were you at all intimate with that lady?—Yes, I knew her very well. Q. Did you walk about with her at all?—Yes, I walked about with her, and rode about with her. Mr. GIFFARD: Did you ascertain at any time whether the degree of friendship which existed between you and Miss Doughty was acceptable to her father?—I think not. Q. You mean it was not acceptable?—No. Q. Do you remember at all any particular time when that became manifested?" I pray your attention to the answer.—"During the latter part of 1852." It was manifested, as we know, in the January of that year. "Q. I do not know whether you can give us any idea—I do not mean exactly how many days or weeks you walked or rode with Miss Doughty, but can you give us any idea of what the degree of intimacy was with you? Did you walk or ride once or twice a week, or less?—When I was there? Q. Yes; what extent do you say?—I could not positively tell you. Q. Were you in the habit of going out together without any other company or not?—Yes, at times. Q. I think you say you did, at some time or other, discover that your attentions to Miss Doughty were not acceptable to her father?—Yes. Q. That I think you say is the end of 1852?—Yes." So that, twice over, we have the time fixed as being at the end of 1852. "Q. Did that discovery have any effect on your remaining there or not?—Well, I did not go there so often." That is a statement made on his examination by his counsel, of course on his own instructions, and he there fixes the date of the discovery that his attentions were displeasing to the father as

happening at *the end of 1852*, and he adds that after that discovery he “did not go to Tichborne so often as before.” Now the discovery by Roger Tichborne, that his attentions to Miss Doughty were displeasing, was made, we know, in January, 1852. The defendant says it was at the end of 1852; and he says that having made the discovery he did not go to Tichborne so often as before. Is it true, even supposing him to be mistaken as to the date, and that his memory has failed him as to that—is it true that he did not go to Tichborne so often as before? Having been there in January, Roger was there again in February. He was there again in June. That is twice in the course of six months after the time of the discovery, and that is quite as often as he had ever been there before in any preceding year from the time he went into the army. He went into the army in 1849. He was at Tichborne that winter on a short visit of a fortnight. He was not in England again until the winter of 1850–51, when he went to see them at Upton for a few days on his way to Paris, and for three or four days on his way back. He was again at Upton in 1851, at the time of the Exhibition. He was at Tichborne in the January of 1852, when this discovery took place, when he found that his attentions were displeasing to the father. He was there, therefore, just as often in the year 1852 as he had been in 1851, and as he had been in 1850. Therefore, if the discovery is to be taken as occurring in January, 1852, which is the true date of it, he was there just as often in that year as he had been in the preceding years; nay, if you look through the number of the months when the visits took place, he was there oftener. If, on the other hand, we are to take it that by the discovery he means what was conveyed to his mind by the letter of July of Lady Doughty, then he is on the other horn of the dilemma: he says he did not go there so often: he never went there after that at all. In either point of view the statement cannot be taken to be otherwise than inaccurate.

On cross-examination, he is reminded of what he had said on his examination-in-chief. He is asked if that is correct, and he says “It is quite correct.” *Q.* And that is true?—That is true. *Q.* Now, just let me understand when it was that you say you discovered that your attentions to Miss Doughty were not acceptable to her father?—Well, that is a very hard thing for me to say. *Q.* You have said there, the latter end of 1852?—Yes. *Q.* But about what time? It will fix your mind, perhaps, if you will tell me whether it was before or after you had begun to make arrangements about selling out?—I think it would be about July. *Q.* What?—About July. *Q.* About July?—I think so. *Q.* Is that what you mean by the latter end of 1852?—Well, really, if you are going to catch me up at every date, it is impossible for me to remember to a day or a month. LORD CHIEF JUSTICE BOVILL: It was your own expression in answer to

the Solicitor-General. The WITNESS: My Lord, I try to do my best. The SOLICITOR-GENERAL: Can any man deal with you more fairly than by reading out to you your own answers to questions by your own counsel? It is not cross-examination, mind.—I never can confine myself to dates; I believe I have expressed that on several occasions. Q. You can never confine yourself to dates?—No; not to a month or to a week. The LORD CHIEF JUSTICE: The Solicitor-General called your attention to a fact with reference to your selling out, and then, when he called your attention to your selling out, you said it was about July?—I do not think selling out had any reference to that.” Says the Solicitor-General, again reading over the examination-in-chief and the answer: “‘It was during the latter part of 1852.’ That is your own counsel examining you, and your own statement?—Well,” says the defendant, “what would you call July? is it not late in the year? Q. Is that what you meant to say?—Well, it really did not occur to me what month it was in. Q. What?—I could not say what month it was in. Q. I am not asking you what month it was in, I am asking you whether what you swore to Mr. Giffard is true, that it was towards the latter end of 1852 that you discovered that your attentions to Miss Doughty were not acceptable to Sir Edward Doughty?—Do you call July early or late? Q. When you said the latter end of 1852, did you mean July?—Well, I do not think I turned it over sufficiently in my mind to come to calculate accurately. Q. You do not think you turned it over sufficiently in your mind?—No. Q. We will see about that?—I am quite certain the jury will understand that I could not speak to a month at that time; you are trying to confuse me. The SOLICITOR-GENERAL: The jury will judge whether I am trying to confuse you, or putting fair or proper questions to you. The LORD CHIEF JUSTICE: The questions are very clear and distinct. The SOLICITOR-GENERAL: If I put any ambiguous questions, or questions that are unfair, my Lord will interfere, and the jury will interfere, no doubt. I put to you as plain and distinct a question as the English language admits of. When you said twice over, to your own counsel, that the fact of your attentions to Miss Doughty becoming unacceptable to Sir Edward was known to you in the latter end of 1852—it is your statement, not mine—did you mean the month of July?—I call the month of July the latter end of the year. Q. Did you mean the month of July, when you said that?—I must have meant that. Q. Is it the fact that you discovered it in the month of July?—I cannot say July positively.” The Solicitor-General presses him, and says, “Surely you can tell me. You were paying your addresses to Miss Doughty, according to you, were you not? Surely, you can tell me when—about—in the month of July, 1852, as you say, the mind of



Sir Edward Doughty upon the subject became known to you?—I do not know. *Q.* You say it led to something—to your going there less often: surely you can tell me in what part of 1852 it was? You say first, ‘the latter end,’ and then ‘the end.’ What I think you said is, ‘at the end of 1852;’ first the ‘latter part,’ and ‘then the end of 1852.’ Did you mean by saying ‘the end,’ when you spoke of the end of 1852, did you mean July?—I am in a perfect confusion; I really do not know. *Q.* A perfect confusion? Stuff! Don’t tell me about perfect confusion. You know very well what you meant by what you said on the 31st of May last?—My counsel asked me a simple question, to which I gave a simple answer: you put the question in a very different way, which causes me to remember, and to remember more distinctly. *Q.* Then, as far as confusing you, you see I help your memory. I am very glad, indeed, that that is the effect of my questions; now we shall get on. Now that I have enabled you to remember more distinctly, tell me in what part of 1852 it was that you discovered that your attentions to Miss Doughty were not acceptable to Sir Edward, in consequence of which you went there not so often?—It would be about July or August.” And that is repeated—“It would be about July or August. I think it was July or August.” The Solicitor-General presses him, and says, “Now, you must know very well when it was you discovered that those addresses were not acceptable to her father, and which led, as you say, to a discontinuance of your visits: you know when you discontinued your visits. Mr. SERJT. BALLANTINE: ‘Not going there so often.’ The SOLICITOR-GENERAL: Well, I have read it two or three times over; not going there so often. I have read the words about the discontinuance of your visits so frequently. Now, tell me what time it was?—I have already told you. *Q.* You say it was not later than August?—I really cannot speak to a month. *Q.* Was it in the winter? That you must remember: surely you can tell me that?—I think it was in July or August. *Q.* That is what you swear, is it?—I did not say anything about swearing. *Q.* That is what I asked you?—Well, I am not going to swear to it. *Q.* Would you swear it was as early as that?—I am already on my oath; if I swore it five hundred times it would be no more than what I am doing now. *Q.* Will you swear it was as early as that?—No, I won’t swear it, because perhaps you know the proper date, and I do not. *Q.* You must know whether it was summer, or autumn, or winter, when this matter happened, which led to your discontinuing your visits to your uncle’s house: you must know that?—I am not aware that I said I did discontinue my visits. The SOLICITOR-GENERAL: You caught that from my learned friend. Mr. SERJT. BALLANTINE: Don’t say that. The SOLICITOR-GENERAL: Well, you did not go there so often. It led

to your not going so often to your uncle's house. Now, you must know?—Well, you seem to think so, but I do not know how it is: you know better than I do seemingly. *Q.* Well, on some things perhaps I do. You must know when you discovered this, and acted upon it. You must know whether that was in the winter when the days were short, and the snow was falling, or whether it was in the summer when the sun was high, and the roses were out. You must know that, you know; you must know it?—No, I have only one thing from which I can tell the date. *Q.* What is that?—That is *my* business. *Q.* No, no, it is *my* business, if you please. There is only one thing that you can refresh your memory from; what is that?—Well, I do not think that I am bound to answer. *Q.* Oh yes, indeed you are?—*You* might say so. *Q.* I wish to know, for a very good reason, what date you give to this discovery, and you say you have something by which you can refresh your memory: what is that?—Well, I say I do not feel bound to tell you. *Q.* Then I ask for it?—If the judge asks me to tell him then I will do so. The LORD CHIEF JUSTICE: What objection have you?—Well, it is something I was thinking of. *Q.* If it is anything that brings it to your recollection, what objection have you to mentioning it?—Because it involves another party, my Lord. The SOLICITOR-GENERAL: It involves another party! LORD CHIEF JUSTICE BOVILL: The whole question involves other parties, and that is no ground for not mentioning it. The SOLICITOR-GENERAL: Now, then, what is it? The WITNESS: Am I bound to say, my Lord, what it is?—The LORD CHIEF JUSTICE: I think so?—Well, I must be more careful for the future. I was paying my attentions to Miss Hales at Canterbury about that time”—Miss Hales, as we know, has positively denied that Roger Tichborne ever paid her any attention at all. She did not even recollect him—“The SOLICITOR-GENERAL: Miss Hales?—Yes. *Q.* That brings it to your recollection?—Yes. *Q.* You discovered that your attentions to Miss Doughty were unacceptable to her father, and you recollect that from the fact of paying attentions to another young lady at the same time. When was that?—Well, that was about September or October. *Q.* About September or October?—What are you alluding to, about September or October, I should like to know? *Q.* What am *I* alluding to? LORD CHIEF JUSTICE BOVILL: What is it *you* were alluding to, in September or October?—I remember I was paying my attention to Miss Hales about that time; but I think the Solicitor-General wanted to put another construction upon it. The SOLICITOR-GENERAL: You are too deep for me, a great deal. I have no object in the world but to get from you the date; and you say that paying your attention to Miss Hales at Canterbury refreshed your memory. When was it you discovered that your attentions to Miss Doughty were unaccept-

able to her father?—It must have been about July or August, I think. *Q.* That you swear now, will you?—Well, I am already on my oath. *Q.* I know you are?—Well, what do you want me to swear over again for? What difference can it make? *Q.* Will you swear that in July or August you discovered it?—I really do not remember it; I won't swear it." He is further pressed, and he says, "It would be hard for me to say, but it was a well-known fact for a long time."

An important inquiry then presents itself, namely, as to when he was last at Tichborne. "As I understand, you say you did not go there so often?—No, I did not. *Q.* When did you last go there?—When did I last go there? *Q.* That is my question?—I understand what you ask, I think: a few days before I went away. *Q.* What?—A few days before I left. *Q.* You are speaking of Tichborne?—Yes. *Q.* When did you last see Miss Doughty before you left England?—Not for several weeks." Thus, you see, he says he went to Tichborne a few days before he went away. It is a thing about which one would hardly suppose he could have been mistaken.

Now we know that Lady Doughty wrote to Roger on the 1st of January, 1853, shortly before he left England, urging him to go to Tichborne to see his uncle, who was in that state of health that it was quite certain he would never see him more in this world after he went away—begging him to go and see his uncle and take leave of him, not as a final leave, but as if he expected to see him again—the natural way in which a man would take leave of a relative who, like Sir Edward, was in such a state of health that it was known to other people he was dying, but who might not himself be aware that his end was so near. We know that Roger refused to go. Lady Doughty had intimated in her letter that she was going to take Miss Doughty with her to Wardour, in order that she might be away from Tichborne. Roger Tichborne thereupon refused to go to Tichborne, and in consequence saw his uncle no more. He writes to Gosford, telling him of the invitation, but saying he shall not go. The defendant was therefore clearly wrong in saying he went to Tichborne a few days before he left. Strange to say, on the next day's cross-examination, he states, as you will see hereafter, directly the reverse, and says he did not go to Tichborne at all before he left. With regard to the question whether or not he saw his cousin some weeks before he left—a matter all important as regards the question of the sealed packet—I reserve all observation to a future occasion. We have not yet done with the question put to him as to when he made the discovery that his attentions to Miss Doughty were displeasing to her father, his answers upon which may be very material as showing a knowledge or want of knowledge in that important part of the



history of these two persons. But that will take us rather longer than I wish to detain you to-day; we will therefore resume the question of the relations between Roger Tichborne and Miss Doughty at that point to-morrow.

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## ONE HUNDRED AND EIGHTY-SIXTH DAY.

*Wednesday, February 25, 1874.*

THE LORD CHIEF JUSTICE: Gentlemen, we were yesterday engaged in considering the statements of the defendant with reference to his breaking off his attentions to Miss Doughty, in consequence of his having discovered that those attentions were unacceptable to her father. When the cross-examination is resumed, he is asked this question, "Were they ordinary attentions or were you paying your addresses to her?" And he says, "Well, ordinary attentions, I suppose. Q. What?—Ordinary attentions; I am unable to draw a line between the two. Q. 'Ordinary attentions; I am unable to define the line between the two'?—Yes. Q. Is that what you said? Do I understand you to say that you are unable to define a line between ordinary attentions to a young lady and paying your addresses to her?—Just so. Q. Do you mean to swear that you cannot tell the jury whether, according to you, you were paying your cousin the ordinary attention that a gentleman pays a lady in whose society he may be, or whether you were paying such addresses as would lead to an offer of marriage? Is that what you mean to swear?—No; what I mean to say is this: what might have been known privately between ourselves was not known outwardly to the world." Now an observation here presents itself, that until the meeting in January, 1852, nothing was known between the two cousins, so far as we are aware, of their reciprocal feelings towards one another. Lady Radcliffe tells us that she was not sure, but she "hoped" Roger was paying her the attentions of a man courting a lady; and Roger in his paper expressly says that until he came to Tichborne on that occasion he really did not know that she returned his affection. He thought she had forgotten him. So that the statement thus made by the defendant cannot be accepted as a correct representation of the matter. The fact of Roger being in love with his cousin was communicated by him to Lady Doughty in confidence a long time before it was known to her daughter. Any understanding between the cousins as to their mutual feelings after that was contemporaneous only with the knowledge of it on the part of Sir Edward Doughty. There was nothing known privately

between them as distinguished from what was known to the father and mother of the lady.

But now comes an inquiry, the importance of which will be at once felt. He is asked how he discovered that his attentions to Miss Doughty were unacceptable to her father. "How did you discover it?" He answers, "I do not see how it is possible you can expect me to answer a question of that description." Then his previous answers with reference to this discovery, given on the examination-in-chief, which I have already read to you, are repeated in these words: "*Q.* I think you say you did at some time or other discover that your attentions to Miss Doughty were not acceptable to her father?—Yes. *Q.* That, I think, you say was at the end of 1852?—Yes. *Q.* Did that discovery have any effect on your remaining there, or not?—Well, I did not go there so often." Having read which, the Solicitor-General says: "Now, what I ask you is, how you discovered that your attentions to Miss Doughty were not acceptable to Sir Edward?" The answer is, "It is simply impossible for me to answer that question. *Q.* It is not possible for you to answer that question? LORD CHIEF JUSTICE BOVILL repeats: 'It is simply impossible.' The SOLICITOR-GENERAL: You cannot give me the slightest notion of how you discovered it?—No; I really cannot." Now, we know perfectly well that Roger was summoned to the presence of his uncle, and that the uncle communicated to him the fact that he was aware he was paying attentions to his daughter, that he thought the relationship too close to admit of marriage between them, and, therefore, the attentions must be discontinued. The defendant says that it is impossible for him to explain how it was. "Tell me," says the Solicitor-General, "what it was which led you to discover that the addresses which you were paying to her for the purpose of inducing her to become your wife were displeasing to the person whom you meant to make your father-in-law, according to your account?—I do not know that I can do that. *Q.* You say that was about July or August?—Yes, about that, to the best of my recollection." Now comes another and most important question: "Had you any explanation with her before you parted from her when you discovered the attentions were displeasing to her father?—I do not remember. *Q.* What?—I do not remember. *Q.* That you swear?—That I swear. *Q.* That you do not remember. Did you break off your connection with her? Did you cease to pay her your addresses? You said you paid them to Miss Hales, at Canterbury, you know?—Oh, I know." Now observe this question and answer: "Did you cease to pay them to Miss Doughty?—No; I think it was the other way. *Q.* The other way? She ceased to pay attention to you? Is that what you mean? Do you mean to say she broke it off?—I believe it was. *Q.* You mean that she broke it off: is that

what you say?—Yes.” You will see how that is afterwards altered. Then comes another material inquiry: “Did you write to her at all after the attentions, as you say, were discovered to be unpleasant, and you ceased to go there so often?—I might have done so; I cannot say. Q. What?—I cannot swear. Q. It might have been so, but you cannot say? Upon your oath, did you or did not you ever write one word to her?—What is the good of your asking me to swear upon my oath when I tell you I do not recollect? Q. Will you swear that you ever wrote one word to her? You know a man cannot forget whether he wrote to a young girl whom he was trying to make his wife. You cannot forget that, you know. Did you ever write one single syllable to her?—I believe I did. Q. When?—When? Q. Yes: I mean after you discovered and ceased to go there so often?—Yes, I believe I did. Q. When? and where from?—I cannot exactly tell you when or where, but I believe I did.” The suggestion here made by the Solicitor-General is one which naturally presents itself to everybody. A man is in love with a young girl; he wishes to marry her; the parents discover that he is paying her attention; they do not approve of his doing so; and he is told that the thing must be put a stop to. Under such circumstances, it might be expected that a man would recollect whether he wrote to the person to whom he had thus been paying his addresses, and his relations with whom were thus abruptly put an end to. The defendant is unable to say whether he wrote or not. We know that Roger never did correspond with Miss Doughty. In February, 1852, he gave her the papers in which the state of his feelings is so vividly displayed, but he wrote her no letters. We know from Lady Doughty’s letter of the 1st of July that, when last at Tichborne, he asked to be allowed to write to Miss Doughty, but her parents objected, and he gave up the point. The Solicitor-General continues: “You were paying attentions to Miss Hales in September or October?—I was. Q. You did not write to Miss Doughty then, I suppose?—I might have done so. Q. Hardly, I should think, when you were paying attentions to another young lady?—I cannot tell: the probability is, I might have done so. Q. Did you tell her of your attentions to Miss Hales?—Really I cannot tell you. Q. Very well, did you have any interview?”—and now comes an important inquiry which relates to the interview between Roger and his uncle. We know he had an interview with his uncle, and afterwards one with Lady Doughty. “Did you have any interview after, as you say, this was broken off, or at the time of this being broken off—had you any interview at all with Sir Edward or Lady Doughty on the subject?—Yes, I believe I had”—one would have thought he could not very well have forgotten that—“Q. When? and with which? With Sir Edward or Lady Doughty?—As far as I remember,



with Lady Doughty. *Q.* With Lady Doughty?—Yes. *Q.* Not with Sir Edward? Did you say with Lady Doughty?—Yes. *Q.* That you are sure of?—Yes. *Q.* And you are sure it was not with Sir Edward?—No; Sir Edward spoke to me about it afterwards, I believe. *Q.* When?—I cannot remember the exact date. *Q.* After July or August, do you mean?—It would be about that time. *Q.* What I want to know is, whether you had any interview. You say that this was discovered in July or August: I want to know whether you had any interview with him about July or August; whether you had any interview with him or Lady Doughty. You say you believe you had with Lady Doughty, but not with Sir Edward; am I right?—Yes; and I believe Sir Edward afterwards spoke to me about it. *Q.* You believe Sir Edward afterwards spoke to you about it: where? and when?—At Tichborne. *Q.* When?—About that time, somewhere. *Q.* About that time? Do you mean the same time before you went away?—Before I went away. *Q.* Just tell us, as near as you can recollect, how this came about—what happened between you and Sir Edward Doughty at that interview?—Really, I do not remember what it was.” The Solicitor-General exclaims: “Oh yes! A man is not many times in his life, you know, in company with his intended father-in-law, and breaking off an attachment to a young lady. It does not happen to a man very often, and I do not suppose it has very often happened even to you, and, therefore, I dare say you can tell me. Now come, you can tell me very well what passed. Give us an outline of what passed between Sir Edward Doughty and you?—I do not remember what passed.” Here, again, one cannot help asking oneself whether it is possible that what passed on such an occasion—at a time when a man believed the future happiness of his life to be depending upon what passed between him and the father of his proposed bride—would be forgotten, and every trace of it pass away from his memory? It appears, however, to have been so here. But we have another difficulty which presents itself, namely, that the defendant’s recollection or belief on the subject of the interview at which the objection of the father to the courtship and marriage was communicated to the lover, is that it was an interview with the mother and not with the father; whereas we know, not only from Lady Radcliffe’s evidence but from Roger’s own paper, that it was just the reverse; that he was sent for by the father, and told by the father that his attentions to the daughter must be broken off; and that it was not until later in the day that he had a conversation with the mother; and the way that arose Lady Radcliffe tells us was this: the mother informed her daughter of what had passed between her father and her cousin, whereupon Miss Doughty said, “Let me see Roger, and let us understand one another;” and Lady Doughty

consented, and Roger was sent for and saw them both in the drawing-room, and then he heard from his cousin—of course she had no other course to pursue than to obey the injunction of her parents—but he heard from her own lips the avowal that if it had not been for their prohibition she would have been happy to become his wife. Now the defendant makes the mother the person to communicate with him that he must break off his attentions. How has that arisen? I think I can see the solution of it. What passed between him and the uncle in the library did not become known; but, as I observed before, the drawing-room door does not always keep private what passes within, and probably some one or other knew there had been a meeting in the drawing-room between the aunt and the lover and the cousin, at which this matter was discussed, and perhaps the young lady was afterwards seen manifesting signs of strong emotion, and so the thing got talked of as such things will do; and the next morning, when he is leaving, both parties are seen exhibiting signs of sorrow; and the thing is talked of in the housekeeper's room, and it is said, "Mr. Roger is not to court his cousin any more; Lady Doughty told him in the drawing-room it must be put an end to;" and so we get the account of the interview reversed in the defendant's statement.

Now comes an answer which is certainly rather a startling one. He is asked, after saying he did not remember what passed, "Did it produce much impression upon you?—Upon me? *Q.* Yes?—Well, I really cannot say; I do not remember how I felt at the time."—Considering the strong feeling exhibited in the paper written by himself, one may well ask, "Can it be Roger Tichborne who makes that answer?"—" *Q.* I mean did it produce much impression upon you, so as to make you recollect it, or not?—I think not. *Q.* You think not? The matter did not go very deep into you, perhaps?—Really, I cannot answer such a question as that. *Q.* Surely you can tell me whether you cared much about it at that time. Cannot you recollect what Sir Edward Doughty said? Did it grieve you much for a time, or not? or was it a thing that passed away?—Well, I dare say I felt it at the time. *Q.* Of course we all feel—did you feel it very much? Did you care much about it? or did you easily get over it? You consoled yourself with Miss Hales soon after you know. Did it produce much impression on you one way or the other?—My answer is, that I do not remember what it did at that time. *Q.* Well, did you do anything in consequence of the breaking off? You say you did not go there so often; did you do anything else?—I went abroad afterwards. *Q.* Yes, yes; but you know you determined to go abroad when you found the regiment was not going to India. Did you do anything afterwards?—I do not recollect what I did. *Q.* Can you give me no further account of

what passed with Sir Edward Doughty at that interview at all?—No. *Q.* What?—No. *Q.* Can you tell me what passed—you say you had an interview with Lady Doughty; you gave me Lady Doughty first: that interview you remembered, you know, better: what passed with Lady Doughty?—Do you suppose it possible for me to remember? *Q.* Yes, indeed I do; this was the one occasion of your life when this thing was broken off; I should think you could tell me what passed between Lady Doughty and yourself. Where did you see her?—Where did I see her? *Q.* Yes?—I saw her at Tichborne. *Q.* Whereabouts? in what room?—In the drawing-room. *Q.* In the drawing-room. Alone?—No. *Q.* Who was with her?—Miss Doughty.” So far you see he is right. “*Q.* Miss Doughty was with her? You saw Lady Doughty and Miss Doughty together, did you? Well, now, you see you recollect that. I dare say you can tell us what passed. Give us your own account of what passed when you, a young man, you know, were having this attachment broken off. What was the ground? What did they break it off for? You know at that time you were rather a good match? What was it broken off for? You were the heir of the Tichbornes?—You seem to know a great deal more about it than I do. *Q.* I am not able often to agree with you, but upon this occasion I agree with you entirely; it *does* seem so. Just see if you cannot come up to the level of my knowledge by a little thinking. You know you were the heir of the Tichbornes. How came it to be broken off? Why were your attentions displeasing?—I cannot say just now.” Then he is reminded of many of the things which his memory has enabled him to speak to. “Surely you can recollect what Sir Edward said when he broke off your attachment to his daughter? What was it about?—I have given you my answer, and if you keep me here all night you won’t get any other. *Q.* Do you really mean to say that you cannot recollect upon what ground, if any, Sir Edward and Lady Doughty, as you say, broke off your engagement with your cousin, Miss Katherine Doughty, in July or August, 1852? Is that really what you mean to say?—Yes. *Q.* And is that really true that you cannot recollect?—I do not recollect. *Q.* Cannot you give me a notion? Have you forgotten?—I suppose I have. *Q.* You *suppose* you have. You really mean to say that you cannot tell me upon what Sir Edward Doughty placed his rejection of your suit for his daughter’s hand in July or August, 1852. Now is that what you really mean to say?—I think his principal objection was that we were first cousins. *Q.* What?—I think his principal objection was because we were first cousins.” That is right. “*Q.* Did he say so?—I think I have heard him say so. *Q.* You think you have heard him say so. Do you really mean to say that that was the ground upon which it was put?—



I said it was one of the objections. *Q.* What was another?—I do not know; I forget. *Q.* You forget: well, but did anything pass at all, or was it merely a sort of understanding that it was objectionable, and so the thing was put an end to in that way?—I think so.

*Q.* That was it? That is, there was no regular breaking of it off at all—is that so?—but a sort of understanding between you, as might occur, you know, that it was disagreeable, and that it had better be put an end to. Was that it?—That was it. *Q.* Was that it?—I believe so. *Q.* You understood that it was displeasing, and you went away: is that so?—That is it. *Q.* And, as I understand you, you went there not so often, but you visited again at intervals?—Yes; I did. *Q.* And both Sir Edward and Lady Doughty knew that you did so. You visited by their sanction and invitation, I dare say?—Well, I do not know much about that. *Q.* You must know one way or the other. You say it passed with a sort of general understanding, and that you visited there again at intervals. What I ask you is, did you visit there? Perhaps you might not have had an invitation, but a general invitation. Did you visit there as you had been accustomed to do before, only not so often?—No: when I went into the neighbourhood after that, I put up at Winchester.” Now, I may mention here that I shall presently draw your attention to the correspondence, which appears to me to show most clearly and conclusively, that from the time Roger left Tichborne on the 22nd of June, 1852, he never slept or stayed at Winchester but one night and part of the ensuing day—namely, from the 29th to the 30th of November. “*Q.* When you went into the neighbourhood after that, you put up at Winchester?—Yes. *Q.* Then do I understand you to say that you never went to Tichborne after that?—I did not say so. *Q.* Did you ever go to Tichborne much after that? I thought you said you went there, but not so often?—Yes, I believe I did. *Q.* Well, that is what I want to know. Did you go to Tichborne House?—I believe I did. *Q.* And sleep there as usual, only not so often?—I did not say that, you know. *Q.* Did you go there as you had done before, I say, only on a more distant footing, and not so often?—I believe I did. *Q.* Have you any doubt that you did?—I have no doubt. *Q.* You were received by Sir Edward and Lady Doughty only on this sort of understanding?—No; I think Lady Doughty was at Wardour at the time. *Q.* What, the whole time, from July or August, when you went away?—No. *Q.* You went there more than once?—I believe I did. *Q.* Well, did you see Sir Edward? I mean, were you received there? What I want to know is a general question: were you received there as before, only with this sort of understanding, that there must be nothing more between you and your cousin? That is what I want to

know?—Yes, I believe that was so. Q. You believe that was so, that you dined there, and you were received as usual, only not so often, and not on so intimate a footing? Was that it?—I do not remember dining; I do not know about that. Q. What?—I do not remember whether I dined there or not. Q. You recollect, surely, whether you went to stay there, you know, as the nephew only, not as a suitor, like any other young gentleman might?—I believe I went there, but I do not think I dined there. Q. You went there, but did not dine there?—I do not remember. Q. Did you ever sleep there? You might have come after dinner, and had supper?—I do not think so. Q. What?—I do not think so. Q. Cannot you swear one way or the other?—No, I cannot swear. Q. What did you mean, then, by saying that you went there, but not so often?—Surely you cannot misunderstand that. Q. Yes, yes; I beg your pardon. You know anybody would assume (I should certainly) that you meant to say you went there as you had gone before, only not so often as you had gone before?—You can put that construction upon it: in former years I made it my home, but afterwards I did not.” Then says the Solicitor-General, “I ask you whether I am to understand from you that you went after this breaking off as you did before, only not on such an intimate footing, and not as the suitor, but as the young cousin friend? Is that what you mean to say?—Well, you might put it in that way, but I hardly understand your words. My Lord, I am getting very fatigued, and I certainly do not understand so well the words as I should like to. LORD CHIEF JUSTICE BOVILL: You are very fatigued, and you do not understand the words?—I do not think I should be doing myself justice if I did not mention it. The LORD CHIEF JUSTICE: It is not so very troublesome a matter, you know, as it struck me. You were paying your addresses to the young lady. What the learned counsel is asking you is, first of all the grounds why it was broken off, and then after it was broken off whether you went there again?—Yes, I did go there again. Q. Well, then, upon what footing? It seems a very simple matter?—Well, I went there on the footing that we were all friendly. I was glad to see them, but I did not stay there.” Gentlemen, I must here again observe that, if the evidence and the correspondence do not altogether mislead us, Roger Tichborne never set his foot in Tichborne House after the 22nd of June.

The cross-examination now passes to the subject of the last meeting between the two cousins, and it leads to one of the most striking incidents in the defendant's story, his statement as to the meeting, at which he alleges that Miss Doughty conveyed to him the fact that she feared she was in the family-way. Having said that his visits to Tichborne had become less frequent by reason of his attentions to the cousin being displeasing to her father, the defendant is asked, with

reference to this subject: "Now just tell me when was it you say you were there occasionally, and that you first saw your cousin after the matter was broken off. I do not ask you to a week, but about what time did you see your cousin? Tell me what time was it after the engagement, or whatever it was, was broken off, that you first saw your cousin? About the latter end of November or December, I think.

*Q.* Where?—At Tichborne. *Q.* What passed? Give me your own account of what passed?—Really, I do not recollect all these many years what passed. *Q.* But you can tell me something of what

passed, what you said to her, if anything, what you did to her, if anything, what she said to you?—I cannot exactly tell you what the conversation was. *Q.* I do not ask you exactly. I ask you to tell

me to the best of your recollection, of the strength of which the jury and all of us are judges, what passed on that occasion?—Well, I think, to the best of my recollection, it was merely a conversation as regards my uncle. **LORD CHIEF JUSTICE BOVILL:** What?—In regard to my uncle's conversation with me. **THE SOLICITOR-GENERAL:** With regard to your uncle's behaviour to you?—Yes.

*Q.* What was the substance? I do not expect you to give me the

exact words, but you remember the subject matter; give me the substance of it?—I told her it was quite impossible that I could marry her after what my aunt and uncle had said to me. **THE SOLICITOR-GENERAL:** 'I told her it was quite impossible I could

marry her after what my uncle had said to me'?—It was on that subject; I cannot give you the exact words. *Q.* I am not so unreasonable, but that was the effect of what you said?—That was the effect. *Q.* 'I told her it was quite impossible,' is that it? I am

only seeking to see if I recollect you accurately; I am not supposing you give the very words: 'I told her it was impossible I could marry her after what her uncle had said to me,' is that it?—Just so. *Q.* What said she?—I cannot remember what she said at the

time." Then there comes an inquiry as to where that interview took place. "Whereabouts was it?—At Tichborne. *Q.* In the house

or out?—I think it was out. *Q.* Where?—In the lower end of the village. *Q.* You cannot forget, can you, hardly, where this was?—

Well, I know I had just come home from hunting. *Q.* And where were you going?—I met Miss Doughty, and got off and led my

horse, and walked alongside of her. *Q.* Where did you go?—Went down the village. *Q.* You led your horse?—Yes. *Q.* Then you

told her this, and you cannot recollect what she said?—No; I do not. *Q.* Were you staying in the house at the time?—I was not.

*Q.* Where were you staying?—At Winchester. *Q.* Do you really mean to tell the jury this is all you can recollect of the first interview you had with your cousin after the engagement was broken off between you?—No, but what I should like to explain, both to the



judge and the jury, is, that there are matters which I am very reluctant to state here in any public court. If I do so it will be because I am compelled to do so by the Solicitor-General. The SOLICITOR-GENERAL: Be pleased to understand, as I have told you already, that there are two parties to this. On the part of the other party, as you say, you are emancipated. I told you that before, you know. Is that all you can recollect?—We had a long conversation on that occasion. Q. And that is all you can recollect of it?—On that occasion. Q. Really, that is all you can recollect?—Mr. SERJT. BALLANTINE: On that occasion. The SOLICITOR-GENERAL: I ask, when did you see her next? Then Lord Chief Justice Bovill interposes and says to the witness: “Before you pass to that, I think it right to tell you that this is a very important matter, what passed—it was so opened by your counsel—between another person and yourself, where no other person could be aware of it?—Just so.” Then follow some observations by the Lord Chief Justice on the importance of his recollecting what passed. Then the Solicitor-General asks, “Now, is that all you can recollect of that conversation on that occasion?—Yes, that is all. Q. When did you see her next?—I did not see her after that. Q. Did you never see her after the end of November or December, 1852?—No, not before I went away, I think. Q. Are you sure?—Yes. Q. Certain?—Well, not positive; I think that was our last meeting. Q. I ask you when you saw her first after the engagement was broken off? May I take it, you only saw her this once?—I only saw her once after I went to Upton, I think, if I recollect right. Q. That is not my question, you must have thoroughly understood it?—It all amounts to the same. Q. Well, if it is another way of putting it, let it be so. Then I understand you to say that, after the engagement was broken off you saw her once, and once only?—Yes, I think so.” The Solicitor-General having used the word “engagement,” the Lord Chief Justice interposes, and says, “I do not think there was an actual engagement;” whereupon the Solicitor-General modifies the phrase, and says, “After you discovered your attentions were unacceptable.” Then the defendant interrupts, and says, “I wish to correct my evidence upon that point. I see from the papers that the Solicitor-General said one way, and I said the other way. I made a mistake. I meant the way the Solicitor-General puts it. LORD CHIEF JUSTICE BOVILL: What do you wish me to take down?—The Solicitor-General asked me when it was I understood Miss Doughty discontinued her attentions to me, and I said it was the other way, meaning it was me discontinued them.” Gentlemen, the Solicitor-General had asked him no such thing. He asked him when he ceased to pay his addresses, and it was the defendant himself who said it was the other way, and that it was Miss Doughty who put an end to it. Lord Chief Justice Bovill then

repeats the defendant's answer just before given, "It was I that discontinued my attentions to Miss Doughty, not she to me;" and the defendant adds: "I do not know whether it is in the evidence, it is in the papers the other way. The SOLICITOR-GENERAL: I will read you what the shorthand writer has, if you wish to correct it. This is the shorthand note: 'Did you cease to pay your addresses to Miss Doughty?—No, I think it was the other way.

*Q.* The other way? She ceased to pay attention to you, is that what you mean? Do you mean that she broke it off?—I believe it was.

*Q.* You mean that she broke it off; is that what you say?—Yes.'

Is that what you want to correct?—Yes, I do. *Q.* Then I do not quite understand what you wish to say: did she break it off or you?—It was my uncle, Sir Edward, of course, who broke it off.

*Q.* What in this evidence is it you wish to correct? Did you cease to pay your addresses to Miss Doughty? Do you wish to correct that now?—Yes, I wish to correct that.

*Q.* What do you want to correct it by? What do you want to say now?—It was me who broke it off by her father's commands.

*Q.* Was your attention directed to this by being in the papers?—Yes." I certainly cannot conceive anything more explicit than the question put by the Solicitor-General on the previous day, or the answer which the defendant had given, and in which he certainly said it was Miss Doughty who broke it off, and not he. Possibly, he felt afterwards that that was a very rash statement, which nobody would be disposed to believe, and accordingly he makes this alteration.

The cross-examination continues as to the last interview which the defendant had asserted he had with Miss Doughty. "Now, may I take it then this was the first time and the last you ever saw her after this breaking off?—I believe so. *Q.* That was, you say, the latter end of November or December, 1852. Did you see her before you went after that at all, when you were going away?—I think not. *Q.* Are you sure?—Yes, pretty well sure. *Q.* But surely you cannot have forgotten whether you went to wish her good-bye?—Well, I do not think I did, because Lady Doughty wished me to go there, and she went to Wardour because she would not meet me. *Q.* 'Lady Doughty wished me to go there.' Is that to Tichborne?—Yes. *Q.* And she went to Wardour; whom do you mean?—Lady Doughty went to Wardour. *Q.* 'Lady Doughty wished me to go there'?—To bid my uncle good-bye, but I did not go." Gentlemen, you remember that in a former part of the examination I drew attention to his statement that he did go, that he went to Tichborne a short time before he left, but did not see Lady or Miss Doughty, because they were not there. I observed on that at the time, referring you to the correspondence, which clearly shows that Lady Doughty begged him to go and see his uncle for the last

time, but that he would not go. The defendant in this part of the examination alters his statement, and says exactly the reverse of what he had before said, saying now that he did not go. “ Q. Did Miss Doughty go to Wardour too?—I believe so. Q. Why did not you go and see Sir Edward, if Lady Doughty asked you to do so?—Well, I did not think my uncle behaved in a proper manner.” This is incorrect. We know from Roger’s letter that it was because Lady Doughty had taken her daughter to Wardour to avoid her seeing him, that he omitted to go. Then an inquiry ensues whether he had ever written to remonstrate as to the way in which his attentions to Miss Doughty had been terminated, and he says, “I am quite sure I never wrote to Sir Edward. Q. Did you write to Lady Doughty?—Very probably. Q. You cannot have a doubt?—I frequently wrote to her, therefore I cannot say. Q. Did you write to her about this?—I am not certain, therefore I shall not say.” Gentlemen, I read you two letters yesterday, in which Roger very clearly and explicitly states his feeling of attachment towards his cousin as then still existing, and remonstrates with Lady Doughty for giving attention to reports adverse to him, but avoids giving an answer as to whether he considers himself plighted to his cousin or not. Then the Solicitor-General asks: “You say your uncle did not behave properly to you. I ask you whether you ever wrote a word to your aunt on that subject, on the subject of your uncle’s behaviour, and the breaking off of the engagement? What I ask is, will you undertake to say that you ever wrote one word to your aunt between the time the engagement was broken off and your going abroad?—I do not think I did.” Now, between the 1st of July—which, if the engagement can be said to have ever been broken off, was the time when it was broken off—and the time of his leaving Upton, there are, I think, no less than seventeen letters written by Roger to Lady Doughty, some of them relating to this breaking off of the engagement. Then the Chief Justice of the Common Pleas, thinking the word “engagement” inappropriate, again interferes upon that subject, and says: “Do I understand there was any actual engagement between you and Miss Doughty?—Well, it was an understood thing, my Lord.” “I want to know,” the Chief Justice repeats, “whether there was an engagement?—It was so. Q. It was an engagement?” Now observe this answer—“It was not known to my uncle. Q. What?—It was so, but it was not known to my uncle, and when he heard of it he became very angry.” Now we know perfectly well that, if there ever was what can be called an engagement between the cousins at all, there was not an engagement until the visit in January, when the thing became known to the uncle, and after the attentions which had not at that time developed into an engagement had been for the moment put an



end to. The paper of Roger expressly states that it was not until he came on that visit that he discovered or knew for certain that his cousin returned his affection. It is plain, therefore, that up to the time when the father interposed, which the defendant calls the discovery, there was no engagement, secret or otherwise. Roger writes: "When I left Ireland, I thought you had entirely forgotten me. When I came here I found I had been mistaken in the opinion I had formed." And, again, referring to his having been sent for by Miss Doughty after he had been with her father, he writes: "I saw you felt my going, so that I determined to tell you what I felt towards you;" which he does in the first paper he gave her. We know it was only when in February Roger had appealed to his uncle to consent to their union that there arose, not what may be called a positive engagement, but a conditional engagement that if, after waiting three years, they still continued in the same state of feeling towards each other, then it might be considered an engagement; but otherwise there should be none. Whereas, here, the defendant represents that there was an engagement between Roger and his cousin, not known to his uncle, and, therefore, existing prior to the discovery of the uncle, which, as we know, took place in January, 1852, which certainly is inconsistent with the true state of facts. Then he says that when his uncle heard of it he became very angry. There is no evidence whatever to show that the slightest feeling of anger ever arose in the mind of Sir Edward. If he had been angry it would not have been likely that he would afterwards have given his conditional consent. It amounted to this: he became aware that Roger was paying attentions to his cousin; he disapproved of the match; he thought the relationship stood in too close a degree of propinquity, and he said, "This must not be, and I will not have it, and as you seem to be getting too fond of one another it will be best to separate you at once. Therefore, my dear Roger, go about your business." As to anger, none of the letters show he entertained an angry feeling. Apart from relationship, there was nothing in the position of Roger which should make him objectionable as a suitor to the daughter, so as to make his pretensions a just cause of anger. A man does not feel resentment towards another who wishes to pay his addresses to his daughter, if he thinks these are honourable and proper, because he may think that in respect of rank or fortune or station in life it would not be to the advantage of the daughter, or that for any other reason the marriage would not be desirable. He merely says, "You do my daughter honour in respect of wishing to become a suitor for her hand, but I could not approve of the marriage, and, therefore, I must ask you to discontinue your attentions." Unless there is something altogether disproportionate in his position or station in life, so as to make the pretensions of the man

offensive to the father, the father does not feel resentment; and I cannot see any reason for supposing that Sir Edward felt angry about this, though he might feel it right to break it off.

Then the cross-examination again turns to the time of the last interview with Miss Doughty at Tichborne; and the subject becomes so important with reference to the question of the seduction, and the question of the sealed packet, that I think it right to read to you at length what the defendant says upon it. He is asked: "Were you ever at Tichborne after that?—I believe I was there. Q. But you did not see Miss Doughty?—I do not think so. Q. You could hardly forget that, surely?—I tell you, I do not think I did. Q. When you say you think, do you mean to say you did not?—Yes, I did not, to the best of my belief." Then what he had said before was read to him. "When did you last go there?—I understand what you ask, I think; a few days before I went away. Q. What?—A few days before I left. Q. You are speaking of Tichborne?—Yes. Q. When did you last see Miss Doughty before you left England?—Not for several weeks.' Is that correct?—I believe so. Q. Then did you go to Tichborne a few days before you went away?—I believe I did"—so that here he again reverts to his original statement on this subject, which, as I have pointed out, is certainly wrong—"Q. But are the several weeks you speak of the end of November or December?—Yes, it would be about that time. Q. That is what you mean?—That is what I meant. Q. Then do I understand you to say that your last parting with your cousin was on this occasion, in the village, when you were leading your horse?—I believe it was. Q. The final leave-taking, in fact?—Just so. Q. Then at that time the matter, as I understand you, was broken off between you?—Yes. Q. And by you it was never renewed? You left England in March, you know?—Yes. Q. By you it was never renewed?—I did promise, if single, when I came back I would marry her, I believe. Q. When was that?—At the time I saw her in the village. Q. Walking through the village you promised that?—If she was single when I came back I would marry her." Then there comes a rather awkward reminder: "I thought you were not coming back during your father's lifetime?—No more I intended. Q. I thought you said that was your intention?—I do not deny it now." So that, according to him, having told her that he could not marry her, after what the uncle and aunt had said to him, he tells her that if she remained single until he came back, which would, of course, represent a perfectly indefinite period, seeing it was to depend on the duration of his father's life, he would, if she was single when he came back, marry her. Cold comfort for that poor girl if the rest of his story be true; because it was at that meeting, according to his account, that she made that communication to him which implied the most

disastrous and calamitous state of things to her that could possibly be conceived.

That, gentlemen, was the cross-examination of the defendant upon the subject of his relations with his cousin, Miss Doughty, as her lover, and as paying his addresses to her, and as to the manner and circumstances under which his courtship was put an end to; and the question is, whether the statement of the defendant is such a representation of the facts as you would have expected from Roger Tichborne? Now, it is quite clear that in many respects he makes most serious mistakes. He is aware that those relations existed, and he is aware that somehow they were put an end to; but he appears to be ignorant how, or when they first came into existence, or how or when they were put an end to, or to have only a very confused idea of it. He is quite unaware of what took place in January and February, in the early part of that year 1852—the most striking epoch in the history of this courtship—and he supposes that his attentions to the daughter were discovered by the father and put an end to in July or August, instead of in the month of January. When speaking with reference to the discovery by the father and the mother of the fact that he was paying his addresses to the daughter, and the communication to himself that those addresses were displeasing to the parents, he fixes that as happening in July or August. Indeed, his first statement was that the discovery of his relations with his cousin took place at the end of 1852. It is true upon pressure he gave that up, and put it in July or August, and when reminded of what he had said before, he says, “Oh, I call July the end or the latter part of the year.” But he has no notion of what took place in the January and February before, his idea being that from the moment the discovery was made by the father and mother the thing was put an end to, and that, after this, his position relatively to his cousin was simply that of a relation, and that he went occasionally to the house, not on the same intimate footing as before, not making it his home as he had done in former years, but simply in the way of casual visits. He does not know that, after the discovery, and after he had been told he must no longer pay his addresses to his cousin, the positive prohibition was recalled, and was converted into a conditional consent. It is quite clear from the defendant’s statement that of this—one of the most remarkable incidents in the story—if he is not Roger, he has no knowledge, or, if he is Roger, he has no recollection. You must judge whether it is a thing which Roger could have forgotten. He says that afterwards he visited at Tichborne, but did not visit so often. If it can be so construed that he can be considered as putting the real discovery, by mistake or failure of memory, in July, then the difficulty is the one I pointed out yesterday. If the statement has reference to



what took place in January, he visited at Tichborne just the same afterwards ; if it has reference to July, he never visited at Tichborne at all. So that he is in the dilemma, that whichever way you look at it he is at fault. Again, he says it was an interview with Lady Doughty which led to the abrupt termination of the courtship of his cousin, evidently ignoring the prior interview with the uncle, which was the one at which the objection of the parents was communicated to him. He is obviously unaware that the relation of lovers subsisted, after that discovery, from the month of February until the summer ; and that the breach then was occasioned, not by the discovery by the father that he was paying his addresses to his daughter, because that was known some months before, but by the precipitate conduct of Roger, in pressing his uncle to allow the marriage to take place immediately, instead of at the end of the probationary period which the uncle and aunt had prescribed, which enabled Lady Doughty to intervene, and put his relations towards his cousin upon so distant and cold a footing that he refused to acquiesce in that state of things, and withdrew himself into what I have called a state of sullen reserve. The whole case seems to be, when you come to take it together, that he first speaks of the end of the year, and then of July or August, and makes no reference to the early period of the year when all those exciting circumstances and scenes took place—thus making the whole a mass of confusion. Then he is asked whether or not he corresponded with Miss Doughty. Of those papers which Roger gave to Miss Doughty—papers written under strong and powerful emotion—the defendant has not the slightest knowledge ; there is no trace of it in his account. He ignores the fact that Roger asked permission to write to her and failed to obtain it. The relations subsisting between the two cousins were twice interrupted : once by the father in January, and the second time in consequence of the letter of Lady Doughty of the 1st of July. Of the letter of Lady Doughty of the 1st of July the defendant does not seem to be in the slightest degree aware. He speaks of his attentions to his cousin being interrupted and abruptly terminated by the discovery of the parents. That discovery, no doubt, did take place, so far as Sir Edward Doughty is concerned. I do not know that we can call it a discovery, so far as Lady Doughty was concerned, as she had known as far back as 1849 that Roger was in love with her daughter, and had communicated with him personally and by letter on the subject. However, that his cousin returned his feelings did become known at that time, and so far it may be called a discovery ; but the defendant refers the final determination of his position relatively to Miss Doughty to the discovery of his attentions by the father and the mother in the first instance, and seems wholly unacquainted with the fact that the avowed relation of lovers subsisted

between them after the first interruption down to the month of June, at all events; and that it was by the letter of Lady Doughty of the 1st of July that the second interruption took place. He ignores the latter circumstance, and transfers to the second interruption the circumstances of the first. It seems to be altogether a defective state of knowledge with reference to an event which you would think would leave an impression on most men's minds which would not be likely to be effaced.

Such, gentlemen, being the account given by the defendant in answer to a series of very proper and pertinent questions relative to the courtship of his cousin, and the way in which it was terminated, and of his farewell interview with that cousin whom Roger most undoubtedly wished to make his wife, it is for you to judge of its effect. As I said yesterday, to my mind it is one of the crucial tests of the reality of the defendant's claim to be Roger Tichborne. You have followed carefully the letters of Roger and of Lady Doughty, and the evidence given by Lady Radcliffe and others with reference to this part of the case; and the only question I can submit to you is, whether you think the account I have read to you, as coming from the lips of the defendant, is such an account as corresponds with what you know of the relations of Roger Tichborne with his cousin—of Roger's long-cherished love—of the first understanding of the two lovers—of the suspension of the courtship and the circumstances under which it took place—of the renewal of their intimacy and their conditional engagement—of all that passed between the two lovers on both occasions—of the papers given by Roger to his cousin and the impassioned sentiments they display—of what occurred at Tichborne in June, 1852—of the correspondence which ensued with Lady Doughty, and the final extinction of all hope of the union which Roger had so fondly desired—as that from it you can come to the conclusion that the defendant is the Roger Tichborne he represents himself to be.

And now, gentlemen, let us come to the all-important subject of the sealed packet. Of that sealed packet no mention was made by the defendant, if we can trust the evidence which is before us, until after that remarkable meeting which took place at the Grosvenor Hotel, and which did not take place until the month of June, 1867. Mr. Gosford was unfortunately indebted in a considerable sum to a Mr. Bulpett, a banker at Winchester, and it occurred to some ingenious person that Mr. Bulpett would very likely be able to exercise some influence over the mind of Mr. Gosford, and it was suggested, I believe by Mr. Holmes, but with the concurrence of counsel—I say it to my very great regret—that it would be an expedient and politic thing for Mr. Bulpett to invite Mr. Gosford to dinner; that he

should say nothing to him about any intention of introducing the defendant after dinner, but should bring them together in this way; and it formed part of the same scheme or advice that there should be two gentlemen present with pencil and paper, or pocket-books, or some other medium of taking down what passed, who should take notes of the conversation that ensued. Not a word was said to Mr. Gosford of this intended interview between him and the defendant; but according to Mr. Bulpett, while they were eating their dinner Mr. Bulpett said: "The Claimant is coming here after dinner with a friend or two; I wish to bring you together, but if you do not like to meet him you know you can always go away." That is what Mr. Bulpett states. I do not think Mr. Gosford was asked as to the latter part of the statement; he was not asked whether, in the course of the dinner, Mr. Bulpett told him that the defendant was coming, and gave him the option of retiring if he did not desire to meet him. It is quite certain that he went there wholly unconscious of what was about to take place. The defendant and the two gentlemen made their appearance after dinner. What passed on that occasion is, all of it, very material, but the most important part is, of course, that which has reference to the packet which had been left by Roger Tichborne in the hands of Mr. Gosford. The conversation, however, does not immediately turn upon that. Mr. Bulpett begins by saying, "I have brought you two gentlemen together. I feel you only want to be brought properly together to understand one another;" and then, according to Mr. Gosford's account, "He said, 'Now ask him some of those questions you asked him before, and you will find he can answer them.'" Mr. Gosford explains this by saying that, having put various questions to the defendant at Gravesend, and having received answers from him which plainly showed that he knew nothing about the matters to which the questions referred, he (Gosford) afterwards communicated to Mr. Bulpett all that had then passed between the defendant and himself on that occasion. He considered Mr. Bulpett, as he says, as an intimate and confidential friend; he went to see him on this subject; he told him all that had passed. He says: "After seeing the defendant at Gravesend, I had spent a couple of hours with Bulpett at his own house late at night. I had a vast deal of conversation with him, which I suppose I cannot relate. I gave it him in full confidence, just as I would to my best friend." Then, to his surprise, when he meets the defendant at the Grosvenor Hotel, Mr. Bulpett asks him to put, one after another, the same questions which he had put at Gravesend, and to which he had there received such unsatisfactory answers. "Ask him," says Bulpett, "some of those questions you asked him before, and you will find he will answer them." And it turned out that when he put one or two of the questions the defendant did answer them.



“I found,” says Mr. Gosford, “that all I had told Mr. Bulpett had been communicated by him to the defendant.” That is the view he takes of the interview at the Grosvenor. He says: “Mr. Bulpett said, ‘Ask him about Upton.’ I did not feel inclined to renew the conversation. He said, ‘Ask him about the island.’ I turned round to the defendant and said, ‘What about the island? What do you know about the island?’ to which he answered, ‘Not much; but I remember some poachers came to the island, and I chased them into Poole,’ on which Mr. Bulpett said, ‘Well; there!’ as much as to show how very correct he was.” My Brother Lush asks, “Is that a matter that you had explained to Mr. Bulpett?—Yes, every word, my Lord. I had given him the full account of it, and explained it to show how impossible it was that a man should not have known these circumstances. Then Mr. Bulpett said: ‘He remembers that ride he had with you; ask him about that.’ That was one of the questions I had put to him at Gravesend. The defendant gave me an account of that; of the horse running away. Then Bulpett referred to Slaughter. I forget whether he said, ‘Ask him about Slaughter,’ or how he led to the thing which induced the question. I turned to him and asked him about it. I said, ‘What do you remember about it? What do you remember about the dog-cart?’ And he said, ‘Oh, I remember very well one day driving you into Poole, and I upset you into the water.’” Here he appears to have been all wrong. It was Mr. Slaughter whom he upset, and not Mr. Gosford; and Mr. Gosford says to him: “You are out in that altogether, for I was not within fifty miles of the place.” He adds, “I only heard of the circumstance afterwards. I got angry at the thought and reflection that everything I had told Bulpett in confidence had reached the defendant. I turned to Bulpett and said, ‘This is idle nonsense.’ I saw that everything I had explained had been carried back to him. The LORD CHIEF JUSTICE: You said, ‘This is idle nonsense’?—Yes, everything I had put to him before, and which he could not answer about, a single one of them. Bulpett tried to pacify me, and said, ‘Talk to him about some other things.’ I said, ‘I will tell you what’”—and this is what leads up to the sealed packet—“‘I will tell you what, I have got something I will put to him in private, before no one else;’ and Bulpett said, ‘You will not mind me.’ I said, ‘I object to you as much as anybody else; I shall only speak to him in private.’ Mr. HAWKINS: Continue, if you please, and give it us word for word as far as you can?—Seeing I was determined, Bulpett took the other two gentlemen from the table”—they had gone, it seems, from the public dining-room into the smoking-room, and this occurred in the smoking-room—“Bulpett took the other two gentlemen from the table, and left us together—us two. They retired to another part of the room, quite out of hearing, and quite away.

*Q.* What then?—When they were gone—I took care they should be out of hearing—I turned to the defendant, and said, ‘Now look here; if you are Roger Tichborne you can tell me what the nature of that paper was which you left with me when you went abroad?’ *Q.* Repeat that?—‘The contents of that paper,’ or ‘the nature of the paper,’ I am not sure which were the words I used—the substance is the same—‘which you left with me when you went abroad?’ He thought a moment or two, and he said, ‘I cannot remember.’ *MR. HAWKINS:* What next?—I know we got warm just then about it. I led further up to it. He could not remember. I said, ‘I will tell you further. It was an undertaking in the event of your marriage with a certain person, that you would carry out certain arrangements at Tichborne.’ I mentioned no name; but I led him up so far, and he again said, ‘I cannot remember;’ and he did not remember. Then I made some remark, ‘It is no use talking,’ or something like that. I felt sick of the whole thing.’ He got excited too, and he began to complain that he had been watched, and the way he had been used. He said two detectives had watched him about the town. I said, ‘That is a most unlikely thing.’ Then he mentioned the name of Mr. Stourton. Mr. Stourton was the name of the guardian and trustee of the infant baronet. He said that he knew Mr. Stourton had been attempting to bribe his witnesses. *Q.* Do you remember his language when he said that?—I was just going to finish what he said with reference to Mr. Stourton. He said that ‘Mr. Stourton might remember that if he could give people £500, other people could give them £600.’ Those were his words with regard to Mr. Stourton. I said, ‘I know Mr. Stourton too well for that,’ and the matter dropped, but we were both very hot about it. *Q.* After that was there any touching at all on either Tichborne or Upton, after this conversation; did you get back to the old topics?—No, I think not then.” Then Mr. Bulpett and his friends rejoin them. “*Q.* What happened next; tell us in the order?—Just at that time—whether Mr. Bulpett noticed that we were talking excitedly or not I do not know—they came back; and he said, ‘I don’t want you to be talking about these things;’ we were then talking about dogs and things of that sort—‘Talk about something you both know.’ I said, ‘Well, I have just asked him a straightforward question. I have asked him the nature of a packet he left with me when he went abroad.’ Mr. Bulpett turned to him and said, ‘Well, that is a straightforward question, Sir Roger: what was it?’ and he said, ‘I do not remember.’ Those were the very words he uttered. *MR. JUSTICE LUSH:* He said he did not know?—‘I do not know,’ or, ‘I do not remember.’ *THE LORD CHIEF JUSTICE:* Did the others hear what passed between you?—They must have done; they were at the table. *MR. HAWKINS:* Do you remember what occurred next?—Then, just at that moment, I think

the very next thing was that Mr. Bulpett said, 'Have you got it?' or, 'Where is it?' I said, 'No matter where it is.' I neither said I had it, nor that I had destroyed it. My words were, 'No matter where it is.' I remembered that so distinctly afterwards; and thought it was rather a ready reply; it occurred to me on the instant, and those were the very words I used. Q. 'No matter where it is'?—'No matter where it is.' Then he is asked whether he said anything about Roger's letters. "Just directly after that I said, 'If I had had any idea of meeting you I would have brought a handful of Roger Tichborne's letters.' Mr. Bulpett said, 'Have you got those letters?' I said, 'Yes, up to within three weeks of Roger Tichborne going on board the 'Bella.' Just then, or previously to that, he had mentioned the dogs. Q. Tell us what he said about the dogs?—I asked him the name of the dogs, and then he told me the names point blank, straight; just as he did every other question I had asked him. He had an answer pat for everything that it had occurred to me to ask him, and not one of which he knew on the first occasion." Then I say: "Then he told you Spring and Piecrust?—Yes, Spring and Piecrust, but neither then nor at Gravesend did he ever make the slightest allusion to another very great pet of his in the shape of a little Skye terrier, which he gave to my wife. He wrote her a long letter, and sent her this dog, and gave it to her before he left England; a special pet of his, a little Skye terrier, which he used to call Scratch, which I kept for years afterwards, as long as it lived, in fact. That I never named at Gravesend, and he never alluded to it here. Q. You did not mention it to Mr. Bulpett?—No, I had not named that to Mr. Bulpett: I had not named it to any one. I never had a dog called Ruff. The rough-haired bitch was not called Ruff at all. I should think you might find twenty people around the place that remembered it now." Then the subject of his selling out of the army was mooted. Q. Did you ask him any question about it, or how did it come out?—Yes, I asked it at Bulpett's suggestion. I asked him why he sold out of the army, and he said, 'Because the regiment was countermanded for India.' Bulpett turned to me and said, 'There is a correct answer.' Then the witness observes, "It was just as correct as twenty people could have given." Q. Was Lady Doughty's name mentioned?—A discussion arose, and I alluded to the fact of his never having seen her. I had always been very anxious that he should see her, or that she should see him rather, and he immediately said that he was very ready to see Lady Doughty. He had never made the slightest effort up to that time. He said then he was ready to see her. Q. What further was said about her?—That idea seemed to strike Mr. Bulpett and these other gentlemen as a matter of great importance, and a memorandum book was pulled out immediately after this proposal of his, and it was written down,



at least I presume it was; I did not read it. Q. You then said you would mention the proposal to her ladyship?—Yes, and it was further suggested that I should be present with Lady Doughty, and that Mr. Bulpett should accompany him. I was quite in earnest; I was very anxious to promote it. Q. Was there anything further took place while the defendant was present, as far as you remember?—I do not know what caused it, but there was something arose which made me ask him, ‘Can you speak Spanish?’ I cannot remember what it was, but I said, ‘Can you speak Spanish?’ He broke out into a hoarse laugh to one of his friends, and immediately began to converse in Spanish to one or other of them. I do not know which of them it was; it was one of the gentlemen. At least so far as I understood it was Spanish, it sounded like Spanish.” Finally the witness is asked whether anything occurred at this interview to alter the opinion he had formed at Gravesend, and the answer is, “Not in the slightest degree.”

Such is Mr. Gosford’s statement of what took place at the Grosvenor Hotel. If that statement is to be believed, this was the very first mention ever made of the sealed packet. But the defendant does not admit that the conversation passed as Mr. Gosford puts it. We therefore must see what he has to say about it. He remembers meeting Mr. Gosford at the Grosvenor; he remembers going there with his friends, Mr. Hingston and Mr. White, and that Mr. Bulpett brought Mr. Gosford to him in the smoking-room, and he admits that the conversation which ensued was taken down in writing. So that they went with the determination of noting all that passed, while Mr. Gosford, not knowing of their coming, had no witnesses to check their statements and to confirm what he might recollect of the matter. The defendant, on being asked, says: “The gentlemen who were present took notes of what transpired. Q. Do you mean Mr. White and Mr. Hingston?—And Mr. Bulpett. Q. Have you seen a copy of that?—No, I have not. Q. Did they all make notes?—I believe they all made notes. Q. While you and Mr. Gosford were talking, do you mean that?—I cannot say when they made the notes. I have heard that they made notes. I know of my own knowledge they have made notes.” So that whatever was said was put down by these gentlemen in their pocket-books, or whatever they had to make notes on. Then he is asked about these other matters, in the first place, as to whether he had said he had upset Mr. Gosford in the dog-cart, and whether Mr. Gosford said, “I was never near the place at all when Tichborne upset Slaughter, but I was at Tichborne, and heard of it afterwards;” to which the defendant answers, “I never said he was there, that I know of.” Then the words put by Mr. Gosford were put to him, and he says “he certainly did not say so.” Then about the island, “Did Mr.

Bulpett say, 'Now ask him about the island'?—I really do not remember, and, to the best of my belief, it never occurred.

*Q.* Did Mr. Gosford say, 'Well, what do you recollect about the island?' and upon that did you say, 'Well, not much; but I used to keep rabbits on it, and the poachers used to come after them, and I used to pursue them in a boat;' and did Mr. Gosford smile, and say, 'Well, really this is idle'?—I am not aware the conversation occurred; but, surely, he never denied that is the fact, did he? that would be idle indeed.

*Q.* If you ask me what he suggested, it is that you did not say a word about it at Gravesend, and you knew all about it at the Grosvenor Hotel?—In the first place I do not think it was mentioned at the Grosvenor Hotel.

*Q.* Did he ask you the names of Roger Tichborne's dogs at the Grosvenor?—I do not think he did. I do not think the names were asked there or at Gravesend.

*Q.* Did not Mr. Gosford say, 'If I had expected to meet you here I would have brought a handful of letters with me'?—He did not; on the contrary, he swore at the Law Institution he had destroyed the letters." That is a mistake on the part of the defendant. Mr. Gosford's statement, on his examination at the Law Institution, was that he had destroyed the sealed packet, not the letters.

We now come to the really important part of the cross-examination as to this interview at the Grosvenor. "Did Mr. Gosford say, 'I should like to ask you a few things in private'?—Yes, and then the others left the room; or, rather, went to the other end of the room for that purpose.

*Q.* When they had gone, did Mr. Gosford say to you to this effect, 'If you are Roger Tichborne, you cannot have forgotten that before leaving England you left in my hands a certain sealed packet which you had marked "private and confidential;"'—No, that was said in the presence of Mr. Bulpett.

*Q.* I am putting it to you as a question, whether he did not say, 'If you are Roger Tichborne, you cannot have forgotten that before leaving England you left in my hands a certain sealed packet which you had marked "private and confidential;" now, what was it?'—You are surely not going to extract that from me again.

*Q.* I am putting that to you as his question?—No, he did not. Let me see—stop a moment. In the first place, it was not said when he and me was by ourselves. He did say to the effect, that I had left a packet with him marked "private and confidential," and asked me to tell him the contents of it, but I declined to do so in the presence of those gentlemen.

*Q.* I ask you whether this was not said when all the other gentlemen had got up and gone away from the table?—No, it was not.

*Q.* And whether the form of the question was not, 'If you are Roger Tichborne, you cannot have forgotten that before leaving England you left in my hands a sealed packet; now, what was it?'—No; that question was asked me in the presence of the other

gentlemen; and from the time the other gentlemen went to the other end of the room and left Mr. Gosford with me he never asked me one question he there described, merely speaking to me about my life in Australia, what happened there; and when Mr. Bulpett came back, Mr. Bulpett said to him, 'Well, now, have you asked him any questions?' and he said, 'No, I have not; we have been talking about local matters.' Q. I am asking you when you were alone with him?—But it did not happen when I was alone with him. Q. Did this happen: that you said, 'I cannot remember,' and did he say to you, 'Well, it was to the effect that if you married a certain person you would carry out certain arrangements at Tichborne?'—He did not. Q. Can you tell me what it was?—I never mentioned anything of the kind. The question was asked me in the presence of other gentlemen, and it was fortunate for me that it was, because there is no doubt they noted it, and my answer to him was, 'You know, Mr. Gosford, the nature of that document, I would not mention it in the presence of others;' and he was then asked by Mr. Bulpett whether that was so, and he said he believed it was. Q. The question of the sealed packet was asked you in the presence of others?—Yes, it was. Q. Did you say you did not remember in the presence of others?—No, I did not; I told him I declined to answer, and this was after we had been left alone. Q. Did he say it was to the effect if you married a certain person you bound yourself to carry out certain arrangements in Tichborne?—He said no such thing. Q. Did he say, 'Now can you tell me what these arrangements were,' or something of that sort?—No, he did not. Q. Did you say you could not recollect it, and did he press you several times to tell him the contents of it, and did you still say you could not recollect anything connected with it?—I did not. My answer to him was, 'You know very well, Mr. Gosford, I would not tell you the contents of that document in the presence of others;' and he was then asked by Mr. Bulpett where the document was; whether it was in existence; and he said, 'Yes, and it is at my lodgings in London now.' When cross-questioned on that at the Law Institution, he swore, in defiance of the witnesses who heard him say it, that he had never said so. Q. I am putting to you, whether this passed in the absence of Mr. Bulpett and the other persons, that he pressed you about the document, and you were unable to tell him; that he gave you some suggestion as to what it was about, not telling you what the purport of it was, but what the subject of it was, and that you were still unable to mention it?—Well, I say it was not so; I never denied knowing the contents, but I refused to speak of them."

That statement, you see, is in direct opposition to that of Mr. Gosford. Of course it makes all the difference whether the defendant's version is true, that he declined to state the contents of the sealed



packet because other persons were present, or whether when Mr. Gosford put the question to him, they being then together alone, if he knew the contents of the sealed packet which he had left with him, he was under the necessity of admitting that he did not remember what the contents were; as also whether, the defendant having first said that in private conversation with Mr. Gosford, upon Mr. Bulpett coming up Mr. Gosford said, "I have put a straightforward question to him," so and so, and Bulpett then said, "That is a straightforward question; can you answer it, Sir Roger? do you remember the contents?" and the defendant thereupon said he did not. If Mr. Gosford's account is correct, of course it would be very strong evidence indeed against the defendant on the question of his knowledge of the contents. But then he says, "I did not say so. I did not say I did not remember. What I said was, I would not divulge the contents of that packet in the presence of others." Thus it stands between those two witnesses; and one or the other must be telling that which he must know to be false. But there is this observation which readily presents itself in favour of Mr. Gosford's statement. Mr. Gosford put the question as a crucial test on which the identity of the defendant as Roger Tichborne turned. If the defendant could then and there at once have stated correctly what were the contents of the document, it would have gone a very long way indeed towards showing that he was Roger Tichborne; and, therefore, I should have expected that a man under such circumstances would have said this: "Mr. Gosford, you know as well as I do that the contents of that packet ought not to be made known to anyone, but kept between ourselves. Let these gentlemen retire, and I will tell you the contents." Is that what, under similar circumstances, it would have occurred to anyone of you to do? You know the other gentlemen had before retired to another part of the room, and there would have been no difficulty whatever in asking them to do so again while the defendant disclosed to Mr. Gosford the contents of the packet. That course was not pursued, and that is a circumstance which I think, in some degree, at all events, makes in favour of Mr. Gosford's account. It is further to be observed that we have it here admitted on the part of the defendant that Mr. Gosford did put the question, and that it did not emanate from himself, and yet you will find that Mr. Bulpett, when called to confirm the defendant, in one part of his examination, suggests that the defendant introduced the subject by saying to Mr. Gosford, "Do you remember I left with you a sealed packet?" The defendant's own account is that Mr. Gosford put the question and he declined to answer it, though he did not say, as Mr. Gosford represents, that he did not remember the contents.

The defendant and Mr. Gosford being thus irreconcilably at issue, Mr. Bulpett was called to confirm the defendant's account of what

passed on that occasion, but I almost think if the learned counsel for the defendant had had any previous knowledge of Mr. Bulpett, and could have foreseen the sort of witness Mr. Bulpett would turn out, and have foreshadowed to himself how Mr. Bulpett would first and last distinctly confirm the statement of Mr. Gosford, he would not have put him into the witness-box. We know how reluctant Mr. Bulpett was to go there; he remonstrated with the counsel, but the learned counsel was obdurate; he insisted upon his being examined. Then Mr. Bulpett appealed to the court, and sent up a note to say he was ill and should not really be able to be examined for a week, and prayed to be let off. So the examination was postponed. This was on the Friday. But on the Monday he came up for examination, and it appeared he had been refreshing his memory in the interval by studying his evidence given on the former trial. I must say a more unsatisfactory witness I have seldom seen in the witness-box. Whether his memory was treacherous and failed him, or whether that is the ordinary condition of that gentleman's capacity, I am sure I do not know, but I have very seldom seen a witness in a more painful condition than poor Mr. Bulpett was in while under examination. That he was a blind partisan of the defendant from the beginning is perfectly clear. He had, if I remember right, seen Roger Tichborne on three or four different occasions; but only in the hunting-field, just as you might see any gentleman with whom you happened to be out with any pack of hounds. He had never spoken to him in his life, and although he was the Tichborne banker, I do not think he ever set foot within Tichborne itself. His knowledge of Roger Tichborne had therefore been of the most trifling character. Yet he takes the defendant up from the commencement; he goes to Mr. Holmes's before he has even made the defendant's acquaintance; he enters into the affair with the deepest interest; he offers the defendant permission to draw to the extent of 500*l.* without security; and never goes to town without going to Mr. Holmes's office to inquire how the matter is going on. In short, he makes himself a sort of blind partisan before he had had an opportunity of forming a judgment at all about the matter; and I must say, having seen the gentleman in the witness-box, I think he took a very false measure of his own capacity and intelligence, when he took upon himself to form any judgment on a matter with which he was so little competent to deal. You must judge how far these things are calculated to shake your confidence in his statements. We had him here in the witness-box, I must say, equivocating and contradicting himself; saying first one thing and then another, and making a very sorry and pitiful exhibition; a gentleman certainly very ill-qualified to meet and grapple with a witness so intelligent as Mr. Gosford. Let us see what Mr. Bulpett says. If Mr. Bulpett could have

sworn that the defendant either himself mooted the question about the sealed packet, or, when it was mooted by Mr. Gosford, said, not that he did not remember the contents, but that he declined to state them, and having sworn it, had abided by his statement, that would have been a strong confirmation of the defendant—that is, if you felt you could place any reliance on the memory, judgment, or capacity of this gentleman.

He began by admitting that his memory was defective; and you will remember he brought with him, anticipating that Mr. Hawkins would ask him in cross-examination questions with reference to his former examination, a newspaper report of what had passed at the former trial, and at every question he appealed in the most piteous accents to be allowed to look at this newspaper report, and I wonder he did not move the stern, unfeeling heart of Mr. Hawkins to let him have his own way, when he kept on making those appeals; but Mr. Hawkins, perfectly right in point of law, refused to let him do anything of the kind, and the poor gentleman did seem every now and then to have a most defective memory, not only as to the material facts, but also as to what he had said on the former occasion. He admitted that he had invited Mr. Gosford, having had a preconceived intention of bringing in the defendant with his two witnesses, Mr. Hingston and Mr. White, and that he never communicated that to Mr. Gosford, but took him entirely by surprise. But then he goes on to say that during dinner he gave him fair notice that the defendant was coming. I must and do say that the whole proceeding was a most questionable one, and I regret that any counsel should have advised it. It seems that with the advice, or at all events the concurrence, of Mr. Locock Webb, this scheme, if I may so call it, was concocted, to get Mr. Gosford there along with these four persons, the defendant and his three friends, Mr. Bulpett, Mr. Hingston, and Mr. White. It is, however, not unfortunate that Mr. Hingston and Mr. White were there, because if there were anything in Mr. Gosford's statement which was untrue, they might have been called, and, as they took notes at the time, they could have given us from their notes what actually passed? The defendant says they were present when Mr. Gosford put the question to him about the sealed packet, and that he declined to answer the question because those gentlemen were present. Mr. Gosford says that was not so, and that it was when he had the defendant alone, and this, for the reason I have given, appears to me, I must say, to be much more probable. The defendant's version involves an apparent inconsistency. If his account of the contents of the sealed packet be true, it would appear altogether inconsistent with it that Gosford should have asked the contents in the presence of strangers. It can hardly be supposed that if the contents of the sealed packet had been such as that the



disclosure of them would have stamped Lady Radcliffe with a taint which never could be removed, Mr. Gosford, the steward and friend of her father, would ask the defendant to state the contents of that packet, which would cover her with shame, in the presence of strangers like Mr. Hingston and Mr. White. The thing speaks for itself. If Mr. Gosford's version of the contents be true, the observation of course does not apply. But there being this conflict between the two statements, the inconsistency I have pointed out is not altogether immaterial.

Now, this is Mr. Bulpett's account of what took place. Mr. Hawkins says to him: "Now listen to the whole question before you answer it. Did you say to Mr. Gosford, 'I have brought you two gentlemen together, and I feel that you only want to be brought properly together to understand one another?'—I think that might have fallen from me. Q. Did you then say, 'Now, ask him some of those questions you asked him before, and you will find he will answer them?'—No, I do not remember anything of that sort. Q. Will you swear you did not say it?—No, I did not say that. I did not say those words. I did not use the words in the manner they are put to me. What I said was, 'Then you had better talk over matters; there are no end of things you and him must know; we will retire.' Q. Things which had happened?—Which happened previous to the defendant leaving England. Upon which we retired and left them to themselves. Mr. HAWKINS: You mean to say there were no questions put before you retired?—I do not think there were. Q. Will you swear there were not?—To the best of my recollection there were not. I put them together and then we proposed to retire. Q. Do you remember any expression during the conversation with Mr. Gosford, such as saying, 'This is idle nonsense,' or anything of that sort?—Yes, I do. Q. With reference to what was that expression used by Mr. Gosford?—Well, I cannot tell you. Q. Was it not with reference to answers the defendant gave to questions Mr. Gosford said he had already put to him at Gravesend?—Well, I am not prepared to say: I remember the words 'idle nonsense.' Q. Addressed to you?—No, addressed to the defendant. Q. Addressed to the defendant?—Well, it was not addressed to me. Q. You remember the expression?—I remember the expression. Q. After using that expression did he tell you this: did he say, 'I have put to him in private something?'—I do not quite understand what you mean. Q. Did he say, 'I will tell you what; I have something I will put to him in private before no one else?'—Are you talking of Mr. Gosford? Q. I am?—I think Mr. Gosford, if I remember, stated that he did not like to talk of matters before strangers, but he would talk of matters before myself and the defendant. Q. Just attend to the form of the question:

did he not say in substance this—the very words I do not expect you to recollect, but in substance this—‘I will tell you what; I have got something I will put to him in private before no one else?’—Well, I do not remember that; I do not remember such an observation.

Q. Did you say, ‘You will not mind me?’—No, I did not say so.

Q. Will you swear you did not?—Yes.

Q. Mr. Bulpett, will you swear it?—Yes.

Q. Mr. Gosford has said you did?—I beg Mr. Gosford’s pardon; it emanated with Mr. Gosford, and not with me.

Q. Afterwards did you take the other two gentlemen away?—Yes.

Q. And did the defendant and Mr. Gosford then go out of hearing?—Yes.

Q. When you say ‘out of hearing,’ do you mean to another part of the room, or what?—I forget whether it was to the lower part of the room or to another room, but my head was so crammed, I now forget whether we went into a separate room, but certainly we went out of their hearing.

MR. HAWKINS: After being away from you for some time, did you join them again?—I did.

Q. How long were you away?—I think I was away about a quarter of an hour or twenty minutes.

Q. You left them alone?—I left them alone.

Q. When you joined them again did Mr. Gosford say, ‘I have just asked him a straightforward question; I have asked him the nature of the packet he left with me when he went abroad?’—When I joined them, I found them both still talking of matters which happened at Gravesend. I felt annoyed, and said, ‘Pray do not talk of those things—talk of things which happened before you left England.’

Q. I must have this question answered, did Mr. Gosford say, ‘I have just asked him a straightforward question—I have asked him the nature of a packet he left with me when he went abroad?’—Not at that moment; that conversation did not take place at that moment.

Q. Did it almost immediately afterwards?—That question did take place, but not at that moment.

THE LORD CHIEF JUSTICE: Then, what happened?—Well, there was a conversation between the defendant and Mr. Gosford, and, as far as I remember, the first question Mr. Gosford put to the defendant was, ‘Where were you when you joined the army?’ The defendant said ‘Canterbury’—We know that Canterbury was the place where he was last quartered and from which he left the army, not where he joined it—“I think the next question, as far as my memory serves me, was, Mr. Gosford said, ‘Did not you want to leave the army?’—No, I am wrong. I must refer to my book.” He wanted to refer to the newspaper report which he had got in the shape of a book, and Mr. Hawkins would not let him. He goes on: “I think the next question, my Lord, was, ‘Did not you want to leave the army?’ I think the defendant’s answer was, ‘Yes.’ Mr. Gosford said ‘Why?’ The defendant answered, ‘Because I was in debt some three or four hundred pounds, and wanted to go abroad.’ I think the following

question, then—I almost forget, but the substance of it was this, that the regiment”—The witness here seemed to be getting into rather a bewildered state, and I asked him “Who is supposed to be speaking?—I think it was Mr. Gosford. Q. Mr. Gosford asked him why he was about to leave the regiment?—I really must refer to my notes; I cannot remember the conversation.” But the inflexible Mr. Hawkins would not permit it. Then I say, “I understand Gosford had asked him, ‘Why he wished to leave the regiment and go abroad?’—Yes; and then I think the next question was, ‘The regiment was ordered to India.’ No; the next question was, ‘Did not you and Sir James have some words about leaving the army?’ I think that was the question from Mr. Gosford, and the defendant said, ‘Yes, they had some words.’ Then, I think, he was asked whether the regiment was not ordered to India, and I think the defendant said that the order was countermanded; I am not perfect on these questions; it is in print, and I know I have omitted one or two questions.” Now, says Mr. Hawkins, “Let us come back to this packet.—Then Mr. Gosford said—I think Mr. Gosford said, ‘Do you remember leaving in my possession a packet before you left England?’” Now, you observe he there makes Mr. Gosford introduce the subject of the packet, asking the defendant whether he remembered leaving a packet in his possession when he left England. You will see by-and-by how he shifts that, and seeks to put it as though the defendant had first referred to the packet. “MR. HAWKINS: Did not Mr. Gosford say, ‘I have just asked him a straightforward question; I have asked him the nature of a packet he left with me when he went abroad,’ and did not you turn towards the defendant and say, ‘Well, that is a straightforward question, Sir Roger?’—I did make use of the word ‘straightforward,’ certainly. The LORD CHIEF JUSTICE: ‘Straightforward question?’—Straightforward question. MR. JUSTICE LUSH: To the defendant?—To the defendant. MR. HAWKINS: And did you add, ‘What was it?’—I do not remember. Q. And did the defendant say, ‘I do not remember?’—The defendant’s answer was, ‘I do not remember anything about it.’ Q. ‘I do not remember anything about it?’—That is, anything about the contents; and then I think I said to the defendant, ‘That is a straightforward question,’ and it was then that he hesitated, and did not remember the contents. The LORD CHIEF JUSTICE: It was then you made the observation?—Yes, my Lord. MR. HAWKINS: Did anything more pass upon the subject?—Well, I have omitted two or three questions; if you will only let me refer to this book.” But there was no touching the hard heart of Mr. Hawkins. Then I interpose and say, “But the question has reference to whether anything more passed on the subject of this packet which had been left.” And now observe how—I do not know whether he sought to give, but how in effect he gave a



different colour to the defendant's answer. You see he had stated that Mr. Gosford having put the question about the sealed paper, the defendant expressly said he did not remember: now he says, in answer to my observation, "The defendant hesitated, and said he did not recollect, and would not state the contents of the letter." I was struck by the change of phrase, which makes the whole difference, and I say, "But observe, it makes all the difference; I have taken down in the first place, that he said he did not remember anything of the contents; upon which you made the observation that it was a straightforward question. Then I took down, 'The defendant still hesitated, and did not remember the contents.' Now you change the phrase, and say he 'would not state them.'" Well, he says, "I know there was a little irregularity. I put the question myself to Mr. Gosford, that I do remember. Q. And then the defendant said, he did not remember the contents?—Yes. Mr. JUSTICE MELLOR: Was the phrase 'packet' used, or the 'sealed packet'?—I think it was 'the sealed packet.' The LORD CHIEF JUSTICE: Was anything more said about the packet?—Yes, I think there was. Q. Do you recollect what it was?—I think I put a question to Mr. Gosford myself upon it. Q. What was the question?—I said to Mr. Gosford, 'Where is the sealed packet?' His answer was, 'I have got it amongst my papers in London.' Mr. HAWKINS: Now, did not Mr. Gosford say, with reference to the sealed packet, 'No matter where it is'?—I believe he did say so. Q. Did he also say, 'If I had had any idea of meeting you'—that is to say, the party—'I would have brought a whole handful of Roger Tichborne's letters'?—I think he did. Q. Did you then say, 'Have you got the letters'?—I do not think I did. Q. Think! Did you say, 'Have you got those letters'?—No. Q. The answer perhaps I was going to suggest to you may recall it to your memory. Did he say, 'Yes, up to within three weeks of Roger Tichborne going on board the "Bella?"'—He said he had got a lot of his letters. Q. 'Up to within three weeks of his going on board the "Bella?"'—Yes, he did."

Gentlemen, I pause for one moment, because we find that here Mr. Bulpett directly contradicts the defendant; because the defendant declares that Mr. Gosford said, and afterwards swore, he had destroyed the letters, whereas Mr. Bulpett says he said he had got the letters, and would have brought them with him if he had known he was going to meet them. Then after another question or two, Mr. Hawkins puts this: "Come Mr. Bulpett, I ask you with reference to the sealed packet, whether the last observation which Mr. Gosford made was not this, 'Never mind where it is'?—I will not undertake to say it was that, or that it was not. Q. My question to you is a very distinct one. Was not the last observation that

Mr. Gosford made about that sealed packet at this meeting this: ‘No matter where it is?’—Well,” says the witness, after another vain appeal to be allowed to look at his printed notes of what he had said at the former trial, “I am not prepared to say that, whether it be so or not. I am not prepared to say it was not so, but I have not the recollection to say it was. The subject ended rather abruptly, and then the arrangement was made by Mr. Gosford and the defendant and myself to get a meeting of as many of his family as were disposed to meet him; that is part of the interview.” Then my Brother Mellor asks, “Have you exhausted your memory as it now is with reference to what occurred on the subject of the sealed packet, quite independently of other questions which you may have omitted relating to other matter? Have you told us all you recollect at this moment about the conversation with respect to the sealed packet.” To which the witness, having just before said he could not recollect what Mr. Gosford had said about it, answers, “The last observation, I particularly remember, about the sealed packet was, that Mr. Gosford said, in reply to a question, that he had got it at home with his other letters; he had got it in London with his other letters. I am prepared to swear that, and that, I think, is almost the last question which really bore on that particular packet; but he certainly said that.” Even if Mr. Gosford had said this with a view of not letting it be supposed the packet was destroyed—because of course the moment that was admitted there would be an unlimited scope to any representation that it might be thought expedient to make as to what the contents were, although falsehood is never to be commended—it might perhaps have been a venial offence in this instance. Mr. Gosford says he did not give a denial, but left the matter in doubt, saying “No matter where it is: I am not going to tell you.” Then Mr. Hawkins goes on: “Now, I ask you this, did not Mr. Gosford tell you, in substance, that if he were Roger Tichborne, it was impossible he could have forgotten the contents of that packet?—Well, I think he did say so; I am disposed to think that Mr. Gosford did make that observation. I am disposed to think that the defendant would not state, and I am disposed to think that he said, in rather an obstinate way, that he would not tell the contents of the packet.” Now, that you see is very clear and intelligible. What Mr. Bulpett wishes to say there is that the defendant did not say that he did not remember, but that he was obstinate and refused to state, or would not state. “I am disposed to think he said in rather an obstinate way he would not tell the contents of the packet.” I should have thought that a man would not have given that representation of the circumstance unless he was prepared to abide by it. Yet in a minute afterwards, as you will see, he goes back to the representation he had given of it at the

outset. I reminded him, "A minute ago I asked you whether you meant to say that, and you said, 'No, he did not remember it?'—Well, he said he did not remember it, but I confess I myself, and I confess I do not think other people thought so; he would not remember. Mr. HAWKINS: I ask you, on your oath, whether you did not say, and whether the fact was not, that he said he could not?—The words were, 'I do not remember.' Those were the precise words." Now, it is impossible for any one not to see the difference between the two statements, and I had expressly pointed out to him that it is one thing to be unable to state and another not to be unable to state, but to refuse to state. No one can fail to see the difference. This unfortunate gentleman seems to vacillate and oscillate and go backwards and forwards until at last you do not know what he intends to represent. When Mr. Hawkins puts his next question, "Did he say anything at all to the effect that he did remember, but he would not state it?" the witness answers—"No. The LORD CHIEF JUSTICE: A moment ago you certainly conveyed that meaning by the language you represented him as having used. You said he 'would not' state it. A man's not stating a thing—that is, refusing to state it—and not remembering it, are two different things?—Well, they are much connected, I think, sometimes. Mr. HAWKINS: Now, I will read you what took place at the last trial. This is a question put: 'Did you not say, Come, that was a straightforward question, what was it?' Then you say, 'There was a considerable hesitation on the part of Mr. Tichborne to answer him; I pressed him to answer.' Q. What did he say? 'I do not remember anything about it.' Was not that the expression?—That is quite correct." Then I interposed and read another portion of former evidence: "It runs thus: 'Did you turn to the claimant and say, Come, that is a straightforward question, what was it?—I did. Q. What did the claimant say?—The claimant still hesitated, and would not recollect the contents of the letter; he recollected delivering the parcel to him. Q. Did he say anything about the contents of the letter?—He would not say anything about the contents of the letter.' That is very much the same thing as we have had to-day. Mr. HAWKINS: Did you not at that meeting ask Mr. Gosford to put a question to him as to matters which had occurred before he left England?—Certainly I did. Q. And were those matters the matters which Mr. Gosford told you he had already put to him at Gravesend?—I do not recollect that." Then he is asked whether Mr. Gosford, as the result of the interview, did not tell him he believed the defendant to be an impostor, and he says, "Well, Mr. Gosford told me the next morning." But he says that the impression produced on the mind of himself and his two associates, Mr. Hingston and Mr. White, at that interview, was that the answers of the defendant to



the questions put by Mr. Gosford were so natural on his part, that he must be the true man. Upon which Mr. Hawkins asks, "Now I ask you to tell me, on your oath, one single thing that occurred at that meeting which could lead any human being to suppose that they had known one another before?—Referring you to the last examination——*Q.* I ask you now?—That is my impression. The LORD CHIEF JUSTICE: You were asked the reason—it is not enough to refer to the last examination?—I cannot help referring to it, but my reason is the questions were put and answers given in a very ready, spontaneous, natural manner. *Q.* Will you tell us what the questions and answers were?—The question was, 'Where did you join your regiment?' And he said, 'Canterbury.' *Q.* Canterbury! Are you aware that he did not join at Canterbury?—No, I am not." So the gentlemen assumed, because the answer was a ready answer, although it might be altogether wrong, as it turned out to be, that the prompt character of the reply was such as to lead to the supposition that it must have come from the right man. "*Q.* Why Canterbury was the last place he was at, not the first?—Well, I am only speaking of what I know. *Q.* You do not mean that you know he joined at Canterbury?—That is my impression." An erroneous one, as we know. Then he is asked, "Can you mention any other one question you are now asked, and the answer which also he answered naturally, which led to the conclusion that those parties had met before?—Another was about leaving the army. *Q.* But why?—Because he was owing 300*l.* or 400*l.*, and wanted to go abroad. The LORD CHIEF JUSTICE: Did you know he was in debt?—No, I had not the slightest idea." The fact is Roger was not in debt, and if he had owed 400*l.* or 500*l.* he would have had no more difficulty in raising it than another man might have in raising as many pence. There is no foundation for saying that being in debt had anything to do with his leaving the army. The witness goes on to say that another question was, whether there had been any words between himself and his father, to which he answered there were. "*Q.* Did you know anything about that?—Nothing whatever." Being asked whether there was any other question, he says there were one or two more, but he has forgotten them, and again he begs to be allowed to refer to his printed minutes, which he had borrowed of old Mr. Baigent, having, as he pretty well admitted, got his examination postponed for the purpose of procuring it, in order to refresh his memory. It thus appears that in all these instances the gentleman acted with great rashness in accepting the defendant's answers as correct with reference to facts about which he knew nothing whatever.

To come back to the packet, the witness is asked: "Was anything said—I do not collect hitherto what the character of the packet was

that was handed to Mr. Gosford, as to whether it was an envelope, or what it was?—You mean the contents? *Q.* No, the cover? *MR. JUSTICE MELLOR:* The physical description?—I think, if I remember, the word was ‘brown paper parcel.’ I have some recollection. *MR. HAWKINS:* Whose suggestion was the brown paper parcel? Is it that the defendant said he remembered giving a brown paper parcel?—I think it was Mr. Gosford. *Q.* Just think a little more?—I think it was Mr. Gosford suggested ‘Do you remember giving me’—Oh, no: let me see; I think it came from the defendant: yes, it came from the defendant.” Now he makes the defendant the first to initiate the conversation about the parcel; just before he had said it was Gosford. “*MR. JUSTICE MELLOR:* The defendant suggested the brown paper parcel; do you mean that the packet was a brown paper parcel?—Yes, it is one and the same thing.” Now, observe what this gentleman puts into the mouth of the defendant, “The defendant said, ‘Do you remember me giving you a brown paper parcel, or a sealed packet, at Southampton, before I left England?’” The defendant’s account has always been that he gave the packet to Mr. Gosford in his parlour at Cheriton, and this unhappy witness does him the mischief of representing him as having said that he gave Gosford the brown paper parcel or sealed packet at Southampton before he left England. He actually makes the defendant say that. Dr. Kenealy, surprised at his witness putting his client in a false position, or in a fix of that sort, asks, “The defendant said that?” And the witness answers, “Yes, to Mr. Gosford. *THE LORD CHIEF JUSTICE:* I thought hitherto it was Mr. Gosford who first asked about the sealed packet?—No; the defendant put that question to Mr. Gosford almost one of the earliest: ‘do you remember me giving you a packet or brown paper parcel before my leaving England?’ And Mr. Gosford said, ‘I do not admit that.’ *Q.* Was that before Mr. Gosford had said anything about the sealed packet?—Yes, I think it was, my Lord. *Q.* Try and recollect, one way or the other, because it makes a very material difference?—Well, I think it was very early in the conversation. *DR. KENEALY:* He said it was one of the earliest questions. *THE WITNESS:* I think it was one of the earliest questions put. *THE LORD CHIEF JUSTICE:* Up to this period of the interview, so far as I recollect, you have not told us of any question put by the defendant to Mr. Gosford, or, indeed, by Mr. Gosford to the defendant?—I think, my Lord, I told you some of both. *Q.* Did you? I do not remember them. You say ‘I think one of the earliest questions;’ we have not yet a question put at all by the defendant, so far as I remember. What did he say about the brown paper parcel?—He said to Mr. Gosford, ‘Do you remember me leaving with you at Southampton a brown paper parcel, or a sealed packet, before

I left England?' Q. But did he use both expressions, 'brown paper' and 'sealed parcel'?—Well, I will not be certain which. Q. Well, but you see it may make a material difference. Do try and recollect. Which is it?—I do not see the material difference, as far as I am concerned, whether it is one or the other. I think it was 'a sealed packet.' Mr. HAWKINS: You think it was a 'sealed packet'?—I think it was a 'sealed packet.' Q. And the defendant mentioned that?—The defendant, I think, put that." Struck by the inconsistency of the witness ascribing the first question relative to the sealed packet to the defendant, I asked him from the answers given on the former examination, "Did Mr. Gosford say, 'I have just asked him the nature of a document which Roger Tichborne left in my hands,' or words to that effect? Did he, when you rejoined them, say, 'I have been asking him the nature of the packet, or brown paper parcel,' if you please, 'which Roger Tichborne left in my hands'?—That question did take place. Q. Then, here again, was it not the first thing that passed when you rejoined them? Did not Mr. Gosford say, 'We have been talking about the brown paper parcel,' or 'sealed packet,' which you please—I do not say to the exact words—'which Roger Tichborne left in my hands when he went away'?—I know that question was put by Gosford." Having said only a few moments before that it was the defendant who had put the question, now he goes back again to the point from which he started, and says, "I know that question was put by Gosford." Then I say, "I only want to remind you in order to know, if we can, when you say it was the brown paper parcel was first introduced?—I think it was one of the earliest questions between the defendant and Gosford? Q. But put by whom? by the defendant or Gosford?—I think it was put by the defendant. Q. And you think he introduced the subject?—I think he did. Dr. KENEALY: I think he went on to say what Mr. Gosford said about it, only he was interrupted. The LORD CHIEF JUSTICE: Well, what do you say Mr. Gosford said upon it?—Well, Mr. Gosford did not recollect." Again he entirely reverses the position, and instead of Mr. Gosford putting the question to the defendant, and the defendant saying he did not recollect, he makes the defendant put the question to Mr. Gosford about delivering him the brown paper parcel or sealed packet, at Southampton, and represents Mr. Gosford as saying he did not recollect. "Q. He did not recollect the brown paper parcel?—No. Q. At Southampton, I think this was, you say?—At Southampton, my Lord. Yes."

Now, what really was the fact and had got into the confused head of this witness was that the defendant did ask Mr. Gosford whether he remembered taking leave of him at Southampton, and Mr. Gosford's answer was, "I do not admit that;" Mr. Gosford's evidence being that he never went to Southampton with Roger Tichborne at all.



“Mr. HAWKINS: Now, just let me ask you this: was not one of the early questions that the defendant asked Mr. Gosford, if he, Mr. Gosford, remembered the leaving him at Southampton when he left England?—Yes, I think that was one of the earliest questions. Q. And did not Mr. Gosford reply, ‘I do not admit that’?—Yes, he did. Q. Mr. Gosford said, ‘I do not admit that’?—Yes, that is quite right. Q. Was the next thing this—did Mr. Gosford say, ‘Do you remember leaving in my possession, just before you left England, a brown paper parcel containing a letter?’—Yes, I remember Mr. Gosford put that question.” Now he has got back again to the original position of things. “Q. You remember Mr. Gosford saying, ‘Do you remember leaving in my possession, just before you left England, a brown paper parcel?’—No, not a brown paper parcel, it was a packet. Q. Attend. ‘A brown paper parcel containing a letter.’ Was not that the question which Mr. Gosford put as the introduction to the sealed packet?—Well, I will not take on myself to say whether the word ‘packet’ was made use of, or whether ‘brown paper parcel.’ Q. But was not that the first question in which the sealed packet was mooted?—I believe it was; I believe that gave life to the sealed packet, that very question. We had not heard of the packet before.” Then I say, “How is that reconcilable with your statement made just now of the question coming first from the defendant, about leaving a brown paper parcel with him?” “Well,” he says, “I think that I must be wrong there. Q. You are wrong as to that?—I think I am wrong, my Lord. I think the learned counsel has put it right.” Well, that is the final result. Mr. Hawkins says: “Now, I call your attention to your evidence at the first trial,” and he reads what he said on that occasion was the conversation. “Is there any question you remember particularly?—I remember Mr. Tichborne asking Gosford if he remembered leaving him at Southampton when he left England. Mr. Gosford said, ‘I do not admit that.’ Mr. Gosford then said, ‘Do you remember leaving in my possession, just before you left England, a brown paper parcel containing a letter?’ Q. And upon that, what did the claimant say to that?—The claimant said, ‘I do not remember it?’ Q. Yes. What further?—Mr. Gosford then said, ‘Do you remember the contents of the letter contained in the parcel?’ Q. What did he say?—Mr. Gosford pressed him two or three times with that question. LORD CHIEF JUSTICE BOVILL: What was the answer?—He did not give any answer at that moment. The question was pressed upon him, and the answer was, ‘I do not at this moment recollect.’” After reading the evidence thus given by the witness on the former trial, Mr. Hawkins says: “That is the question in your own words, you say was put by Mr. Gosford?—I have no doubt that is correct. Q. In which Mr. Gosford had introduced the words ‘brown paper parcel’?—Yes. Q. And then came the question with reference to the selling out of the

army?—Yes, that is quite right. Q. Now, is that a correct version of what actually occurred?—Yes, I believe it is.” So that you see the witness vacillated and swung, as it were, to and fro, saying first the one thing and then the other. In his evidence on the former trial and, in the first instance, on this, he makes Mr. Gosford first introduce the subject of the sealed packet. Then he represents the defendant as first introducing it. In like manner, on the former trial and on this, he first stated that on Mr. Gosford putting the question the defendant said he could not remember. Then he makes the defendant merely decline to answer. Afterwards he comes back to his original statement that Mr. Gosford put the question as to the contents of the packet, and the defendant was unable to answer it. Possibly you may think that you can attach little or no importance to the statements of a witness, who, either from want of capacity or confusion of ideas, is thus inconsistent with himself; but so far as his evidence is of any value, there can be no doubt that the first statement and the last, so far from contradicting Mr. Gosford, entirely confirm him. There is the distinct admission in the end that the statement is right, that Mr. Gosford put the question as to the contents of that document, and that the defendant acknowledged his inability to remember them. The question is one of the most vital importance to this part of the case. A statement as to the contents of the paper was afterwards made by the defendant. When we come carefully to analyse the statement, and endeavour to discover what of truth there is in it, it certainly is a most important fact with which to start, whether when first the matter was brought to his mind that there had been a sealed packet left by Roger Tichborne he knew its contents or knew nothing about it. If Mr. Gosford’s statement, thus confirmed by Mr. Bulpett, so far as the latter can be relied on, is believed, and you are satisfied that at this meeting in June the defendant did not know the contents of the sealed packet, your confidence in his representation of those contents, made a few weeks later, when he knew the paper had been destroyed, must be materially shaken. My learned brother Mellor reminds me of what I have already impressed on your minds, but it really is so important that there is no harm in repeating it—that is, that witnesses having been taken there purposely, in order that anything that was obtained from Mr. Gosford might be recorded in such a manner as that it could be reproduced so as to leave no shadow of doubt as to accuracy, supposing always that the witnesses were honest—and as regards the gentlemen in question nobody suggests that they were not—that there being these notes taken of what passed at the time, besides the recollection of those witnesses, as to a conversation which they had gone there for the express purpose of bearing witness to, if there should be any doubt that the statement

of Mr. Gosford, confirmed by the last statement of Mr. Bulpett, must be taken to be accurate, here are two men of business, either or both of whom might have been called to speak to this all-important matter, namely, the question of whether the defendant did acknowledge that he did not remember the contents of this sealed packet, or simply declined to state them, at the time they were talking about it at the Grosvenor. Those witnesses might have been called if there was any possibility of contradicting the statement of Mr. Gosford as confirmed by Mr. Bulpett; but they are not called, and, if their evidence could have been of any avail, no reason whatever is assigned for the fact of their not being called before you.

Let us next see what occurs afterwards. This interview takes place in June. Mr. Gosford had, I think most incautiously and most unfortunately, let out prematurely that a sealed packet had been left with him, and, of course, the next thing was to know what had become of it, and whether it could be produced. An examiner had been appointed by the Court of Chancery to take the cross-examination of the defendant. Mr. Gosford, who had been appointed executor and trustee under Roger's will, had been made a defendant in one of the suits, and had made an affidavit, and they were entitled in consequence to cross-examine him; and accordingly, when the cross-examination and re-examination of the defendant had taken place, they put up Mr. Gosford, not with a view of cross-examining him on the matters of his affidavit; the only thing they wanted to know was what had become of the sealed packet, and they put that question to him, and Mr. Gosford said, "I have destroyed it." The examination took place on the 1st of August; and on the 2nd, the very next day, the defendant, who, if Mr. Gosford speaks the truth, did not know the contents of the document when he was at the Grosvenor Hotel, draws up a statement, in which he impugns the character and honour of Roger Tichborne's cousin, Mrs. Radcliffe; and Mr. Bulpett, who was a party to the suggestion—he is not certain whether it came from Mr. Holmes or from himself—of having up Mr. Gosford for the purpose of cross-examining him to know whether this document was in existence or not—but who admits that it was he and Mr. Holmes and the counsel who concocted that scheme among them, and who had heard the defendant say he could not tell the contents of that document—having the paper the defendant had drawn up, making statements, as I have just said, impugning the honour of Roger Tichborne's cousin put before him, reads that document and puts his initials to it, in order that at any future time if necessary it could be authenticated, and it never occurs to him to say, "Why, here is a statement of the most vital importance made by a man who two short months ago, in my



hearing, said he remembered nothing about the contents of that packet." Having heard that statement made, this gentleman actually puts his name, or, what is the same thing, his initials, to the paper which purports to contain what had been the contents of that sealed packet, or brown paper parcel sealed up, call it what you like. I must say, upon those facts, that Mr. Bulpett does stand in a very unsatisfactory, and if I were Mr. Bulpett I should say, in a very unpleasant position. It only shows what a rash thing it is for a man to meddle in what does not concern him, especially if it is a matter altogether beyond the limits of his limited capacity, as it is quite clear was the case with Mr. Bulpett in this instance.

Let us continue the history. In the month of February, 1868, several months after the meeting at the Grosvenor Hotel, the defendant had occasion to make an affidavit with reference to documents which were then, or had been, in his hands, and in this affidavit he referred to the document or paper which had been left with Mr. Gosford, and to this affidavit it is necessary that I should call your particular attention: "Shortly before, and in anticipation of my leaving England, in the month of March, 1853, I sealed up and placed in the hands of the defendant, Vincent Gosford, for safe custody, the document set forth in the second part of the said second schedule, with special instructions to hold the same for me as my confidential agent, and not to open the same except in certain events, one of which I know has not happened, and the other I hope has not happened." Of course that is not his language, it is the language of one of his advisers, but it was no doubt drawn up from his instructions, and most insidious language it is. Then in the schedule the document is described as "A sealed document written by me, and relating to my cousin, Katherine Doughty, and left by me with the defendant, Vincent Gosford, just previously to my leaving England in 1853." I say "insidious language" for this reason: it must be taken in connection with the rest of the defendant's statements in respect of this affair of his cousin, and I cannot doubt it was a regular craftily-devised scheme to place the defendant in the position of appearing to know the contents of the sealed packet—while it should appear that those contents were fatal to Mrs. Radcliffe—and to give him the advantage of not having to state the contents in open court, and so exposing himself to the imputation of base dishonour in betraying Mrs. Radcliffe's secret. Observe the language: "I sealed up and placed in the hands of the defendant, Vincent Gosford, for safe custody, the document set forth in the second part of the said second schedule"—Here we must interpolate the schedule—"A sealed document written by me, and relating to my cousin, Katherine Doughty, and left by me with the defendant, Vincent Gosford, just previously to my leaving England in 1853"—"with special

instructions to hold the same as my confidential agent, and not to open the same except in certain events, one of which I know has not happened, and the other I hope has not happened." No one could read that document and not feel that there was latent under those ambiguous expressions an unmistakable reference to relations with Lady Radcliffe which would not bear the light, and which, therefore, could only be something reflecting upon her honour and character. I do not think anybody—especially with the proneness and the tendency there is in the minds of most people to see evil, especially with regard to matters of scandal—could read that and not be perfectly satisfied there was a great deal more meant by it than that which met the eye.

But before going further let me first ask you how would you understand this passage:—"I placed in the hands of Mr. Gosford, my agent, a certain document, with special instructions to hold the same for me as my confidential agent, and not to open the same except in certain events"? Would you understand that to mean that he wrote the document and sealed it up, and then handed it to his agent unread, enjoining him not to open it unless on certain specified contingencies happening? or would you understand it to mean, "I first read it to him; I then sealed it up and placed it in his hands, with instructions not to open it"? You see it makes all the difference, because the defendant's statement, as made more fully afterwards, is most explicit, that he went to Mr. Gosford, wrote the paper in his presence, in his parlour at Cheriton, read it over to him, sealed it up, and then entrusted it to his charge. In the affidavit there is nothing whatever said about reading it over to Mr. Gosford, or making him acquainted with its contents, but, as it strikes me, the contrary. Consider for yourselves whether the true construction of that affidavit is not this: "I wrote the document, sealed it up, placed it in the hands of my agent so sealed up without reading it to him or letting him know its contents, and telling him he was not to make himself or anybody else acquainted with those contents, unless in a certain contingency." That is his first account of it, and now just see how the plot, if you should think it one, and I ought so to call it, develops itself. His learned counsel comes to open his case to the jury on the trial of the ejectment, and then with reference to the sealed packet he makes the following statement to the jury:—"Before Sir Roger left the country he put into the hands of Mr. Gosford a sealed packet. Gentlemen, for reasons that before the end of this case may be made apparent"—There is always this air of mystery kept floating over this subject—"I do not desire to enter into this matter in too great detail. He put into the hands of Gosford a sealed packet, which he told him contained certain directions in the event of his death. Since the arrival of Sir Roger in this country,

in the presence of witnesses beyond all impeachment, Mr. Gosford has admitted the possession of that sealed packet; he has admitted it in the presence of a gentleman of the name of Bulpett, a banker, whose name I shall have to mention again. He mentioned it in the presence of Mr. Hopkins, and admitted that he had that sealed packet in his possession. I am told that it was Mr. Kingsford, and not Mr. Hopkins. Now, if you dwell for a moment on the great importance of that circumstance, here was a packet sealed up, the contents of which could only be known to the young man who left England in the 'Pauline.' No human being but himself could state that; no human being at this moment in the world can tell."—This seems to me to imply a statement corresponding with the affidavit I have just read, that not even Mr. Gosford was made acquainted with the contents of that document—"My client, without pledging himself to the words, is able to tell the contents of that document, and if he does not tell it correctly, he challenges the production of it for the purpose of showing that he lies, and if he does, where will be his cause, and what will be the value of it? Gentlemen, that will never, in my opinion, be produced. I know what has taken place since, and I know what Gosford has said since in examination, in which he appeared on the part of the defendants"—This statement is incorrect. Gosford did not appear on the part of the defendants. The defendant, the plaintiff in that suit, brought him into court and cross-examined him—"I do not believe that they will call Gosford again, and I do not believe that that packet will be produced." What did the learned Serjeant mean the jury to understand? Why, of course, that the document was in existence, and that the defendant challenged its production; and yet the learned counsel, from his own cross-examination of Mr. Gosford, knew that Mr. Gosford had distinctly sworn that he had destroyed that document, when he thought Roger Tichborne was dead and gone for ever, and that consequently the production of the document was a matter of impossibility. I must say, I do not think that was an ingenuous mode of conducting a case on the part of counsel. With all my respect and admiration for the Bar, and desire not to interfere unless I see a thing done which I think is not properly done, and is inconsistent with the ingenuous candour which ought to distinguish an advocate, I do say that Mr. Serjeant Ballantine on that occasion ought not to have led the jury to suppose that Mr. Gosford had admitted the possession of the document, but ought to have added to that statement, what he knew to be the fact, namely, that Mr. Gosford had himself sworn positively that it was no longer in existence. That ought to have been conveyed to the jury at the same time the statement was made, in order that a false impression might not temporarily prevail. Of course it was open to the learned Serjeant to impugn Mr. Gosford's statement



as to having destroyed the packet, if he thought it open to question. All I say is, that the jury ought not to have been led to believe that the document would be purposely kept back, without being at the same time told that it had been stated by Gosford that it had been destroyed.

Then comes the examination of the defendant with reference to this sealed packet, and you will see how he is examined on the subject by his own counsel. “Now, before you went abroad, did you give a sealed packet to Vincent Gosford?—I did. *Q.* Did anybody but yourself see the contents of that packet?—Yes. *Q.* Who?—Gosford, for I read it over to him when I wrote it; it was in his own parlour at Cheriton. **LORD CHIEF JUSTICE BOVILL:** Did you say you read it over to Gosford?—I did, before I sealed it up. *Q.* What was it you read over?—That is a private matter, my Lord. *Q.* You mean you read over something?—A document which I left with him; I read it over in his parlour and sealed it up. *Q.* ‘I read over the document which I left with him:’ is that it?—Yes.” Then Mr. Serjeant Ballantine called on Mr. Gosford to produce the document, as though it were still in existence, which of course he could not do, the document having been destroyed. I do not blame the counsel there, because, in order to let in secondary evidence of its contents, it was necessary to call for the production of the document. The examination goes on. “**MR. GIFFARD:** Now, all I ask you at present, Sir Roger, is this, do you know, and are you able to repeat, the contents substantially of that sealed packet?—I am, but I decline to do so. *Q.* We shall see by-and-by, but at present you are able to do it; that is my question?—I am. *Q.* I quite understand what you refer to in saying you decline to do it.” Now, what was meant to be implied by this? You see, as the matter there stood on the affidavit and the examination, the defendant would have had an immense advantage. He would have appeared to know the contents of the packet. He would have avoided the discredit of openly compromising the woman whom he was prepared, if necessary, to declare he had dishonoured, and yet it would equally have had the effect of compromising Lady Radcliffe and damaging her as a witness against him, seeing that he had told out of court the same story that he was afterwards prepared to state, and did state, in court, and which he had committed to writing, and which had become generally known. We know it had become generally known. The legal advisers all knew of it. Mr. Bulpett knew of it: he had seen the paper drawn up by the defendant about it. The defendant’s affidavit had implied it. Miss Braine had heard of it; she tells us it had been talked about at Winchester. It was just as well known at this time as a thing could be, that the so-called sealed packet had reference to Mrs. Radcliffe, and that it had reference to a particular state of cir-

cumstances relative to Mrs. Radcliffe, which of course everybody would have understood. Thus the defendant would have appeared to know the contents of the document. He would have been enabled to damage Mrs. Radcliffe by saying, "She comes forward against me; I have the means of showing what she is, but I do not desire to do it, even placed as I am in the position of being tied to the stake in this matter, the knowledge of the contents of this paper being made a crucial test of my being Roger Tichborne; and he would thus have got all the benefit of the facts as though they had been extracted from him, and not as though he had spontaneously disclosed them. So that he would have had all the advantage without the odium which would necessarily attach to such a disclosure under the circumstances, and, what is of far greater consequence, without giving Mrs. Radcliffe the opportunity of denying the imputation, or subjecting himself to a cross-examination necessarily fraught with danger as to the particulars of the alleged seduction. However, the Solicitor-General knew much better than to accept that position. He knew perfectly well that neither in the interest of his clients, nor in the interest of Lady Radcliffe, was it possible the matter could be left there, and therefore he was determined, and very properly determined, to drag the whole story into the light of open day, and there have it submitted to the consideration of the jury. It was in the interest of justice, as well as in the interest of Lady Radcliffe, that the matter should be thoroughly examined into and sifted, and the decision of the jury taken upon it upon the former occasion, as it is that your decision should be taken upon it now, when you have all the facts before you. So the Solicitor-General says to the defendant, "I know what you refer to. I make no objection to your stating it," but Mr. Serjeant Ballantine says, "No, not now." He thought that it was better to postpone the period, and Mr. Giffard says, "All I ask you at present is, do you know, and are you able to repeat it?" To which the defendant answers, "I do know it, and have mentioned it to other people—that is to say, the substance of it. Q. Say no more about it at present than this: Are there reasons why you are not desirous of doing that publicly? — There are very strong reasons. The SOLICITOR-GENERAL: You have done it privately, have not you? Mr. SERJT. BALLANTINE: Your time will come to cross-examine him by-and-by. The WITNESS: What do you mean by 'Have I done it privately?' Mr. GIFFARD: Attend to me at present; that is an inadvertence of my learned friend. The SOLICITOR-GENERAL: Do you wish me to tell you? Mr. SERJT. BALLANTINE: Now, Mr. Solicitor-General. LORD CHIEF JUSTICE BOVILL: Your turn will come by-and-by." Having no right to interfere at this stage, the Solicitor-General desisted, and the matter was dropped at the

time, of course to be resumed when the proper opportunity offered. So on the cross-examination the subject is resumed. "You, as I understand, did not go to see your cousin when you went away. Had you seen Mr. Gosford upon the subject of your cousin?—I had. Q. When was that?—It was in November, I think. Q. November?—Yes, October or November. I think it was November. Q. At Cheriton?—At Cheriton. Q. Had you executed your will at that time?—Yes. Q. That you are sure of?—I do not know whether I had signed it. The SOLICITOR-GENERAL: That is what we call executing a will, which is good for nothing until you have signed it?—Just so. Q. Had you signed your will?—No. If I remember right, I signed my will the same month, but I cannot exactly say before or after being at Mr. Gosford's." He is pressed upon it: "Had you consulted Mr. Gosford about the will then?—I believe I had. Q. You surely know that?—I had. Q. Cannot you tell me whether you had signed your will before you went to Mr. Gosford on the subject of your cousin?—No, I cannot tell you whether before or after. Q. What is your impression?—Well, I have not much impression on the matter." Gentlemen, I need hardly remind you that, whereas he is speaking of being at Mr. Gosford's in November, the will was signed in London on the 16th of the preceding June. It certainly does seem strange that the man who had signed his will in London in June should imagine he had signed it in the ensuing month of November, not perhaps that the month in which you may have signed your will some years ago would be likely to remain impressed on your memory, unless there were some other circumstance which fixed it there. But here there was something to impress it on his memory. Roger would have known that he signed his will when he was in London, because he signed it at his solicitor's office. He must have known it was on the occasion of his visit to London in June, when he joined his aunt and cousin. So that although the defendant's answer may be only a lapse of memory, still it is not one altogether to be passed over. What follows is, perhaps, more important: "Did you go up to him on the subject of your cousin more than once?—I used to see him frequently. Q. I dare say you did, but I asked you whether you consulted him on the subject of your cousin, Miss Katherine Doughty, and I understood you did in October or thereabouts. Did you draw up anything?—I did. Q. Under his instructions?—No, not under his instructions. Q. I mean in consultation with him—consulting him about it?—I wrote a paper in his presence, read it over to him, and then sealed it up. Q. When was that?—That was in November; I cannot speak to a day. Q. Did you write it from his dictation or not?—No. Q. The words were your own, were they?—The words were my own. Q. Did you read it over to him?—I did. Q. Seal



it?—Seal it. Q. And give it to him?—And give it to him. Q. Was this before or after October? It must have been before your final parting with your cousin?—No, afterwards. Q. Well, I am confused, then?—I did not say October; I said November. I do not see what right you have to go to a month before.” Then Lord Chief Justice Bovill repeats what the witness had said, “October or November. The SOLICITOR-GENERAL: If you said November, I beg your pardon. Was it before or after you had seen your cousin?—It was afterwards. Q. Did you tell her what you were going to do?—I believe I did. Q. Did you ever give her a copy of it?—Certainly not. Q. You merely told her the purport of it?—That is all; at least I do not know that I told her the purport of it. Q. You merely told her what you were going to do with Mr. Gosford?—Yes. Q. This was to be a thing separate from the will altogether?—Yes, separate from the will. Q. And to be carried into effect by him if you lived? Was that so?—Yes. Q. Do you recollect writing to anyone that ‘your private wishes and intentions, as you intended to have them carried out if you lived, you had sent to Mr. Vincent Gosford’? Do you recollect writing that to Mr. Slaughter?—I might have done so. Q. There is no doubt you might have; ‘my private wishes and intentions, as I intend to have them carried out if I live, I have confided to Mr. Vincent Gosford.’ There were no private wishes and intentions but those?—Yes, there might have been. Q. Of course, there might have been, but were there? You were writing about your will and other things; ‘my private wishes and intentions, as I intend to have them carried out if I live, I have confided to Mr. Vincent Gosford’?—I think that was an allusion to the will. Q. Excuse me; ‘my private wishes and intentions as I intend to have them carried out *if I live*’—a will takes effect on death?—Yes. Q. ‘I have confided to Mr. Gosford’?—I was speaking in the event of my uncle’s and father’s death in my absence.” Then the Solicitor-General repeats the language, and says, “I believe you also say, on parting I think it is with Mr. Gosford, you will do certain things which I do not mention ‘only under the circumstances which I have left with you in writing.’ That, I suppose, is the same thing?—I did not rightly catch what you were saying. Q. You say you will do certain things ‘under the circumstances which I have left with you in writing;’ that is with Mr. Gosford?—I really do not understand. Q. Were there any other private wishes and intentions that you had left with Mr. Gosford in writing, except this matter?—Yes, there was. Q. What else?—Well, I have written them out, and my counsel holds them in a paper. I told you before I am very reluctant”—Then the Solicitor-General, not thinking the moment come to go into the contents of the paper, says, “But besides this paper—I am passing

away from the paper now—I ask whether this describes the paper; I am not asking the contents of it.” Then Mr. Serjt. Ballantine interposes, and insists that the whole paper should be read. Then comes a wrangle, at the end of which the Solicitor-General resumes the inquiry, his purpose being to fix the defendant to a single packet, so as effectually to test his knowledge of the one document, as to which Mr. Gosford was prepared to speak. There is a long cross-examination, with a view of getting it well and firmly established that there was but one document left with Gosford, so that if afterwards the Solicitor-General should be in a position to show that the defendant had no knowledge of the contents of the one document, he might not turn round and say there was another. The SOLICITOR-GENERAL: “Now, tell me whether you left one paper or more than one paper with Mr. Gosford, containing your private wishes and intentions, as you intended to have them carried out in case you lived?—Did I leave more than one paper? I left two papers in one packet. Q. Had they both reference to the same thing?—No, they had not. Q. Were they both in one packet?—Yes, both in one packet. Q. Is this what you describe as a ‘sealed document,’ written by me and relating to my cousin Katherine Doughty’?—Yes. Q. ‘A sealed document’? Did you mean there were two in it? This is what you have sworn. Attend to your affidavit.” Then he reads to him the words of the affidavit, “a sealed document,” the same thing being repeated in the schedule. “Now, do you mean to say there were two?—Yes, I think there were two.” Then the Solicitor-General reads the affidavit again, and points out to him this remarkable circumstance, as appearing on the affidavit itself, that, as it was first drawn up, the word was “documents” in the plural number; that the “s” had been struck out, and the paper initialled in the margin by the gentleman before whom the affidavit was sworn, so as distinctly to show that the affidavit had reference to one single document and not to two. Then there is a cross-examination founded on that circumstance, but the defendant explains that by saying, “Yes, but by ‘document’ I meant what was in the packet, and there might be two papers.” Then the Solicitor-General tries to fix him to this at all events, that, though there might be two papers in the packet, the whole packet had reference to his cousin, that being what was represented in the affidavit, the document being therein stated to be one relating to his cousin. When that question is put to him in that precise form, he says first, “A part of it,” and then, “Yes, the whole of it related, I believe. Q. Both documents related to your cousin?—Yes. Q. And were those the private wishes and intentions which, in your letter to Mr. Slaughter, you say you had left as you intended to have them carried out if you lived, that you had confided to Mr. Vincent

Gosford?—Yes. *Q.* Whether one or two, that document contained your private wishes and intentions which you intended to have carried out if you lived, and confided to Mr. Gosford?—They did.” —A fatal and suicidal answer, gentlemen, if you shall be of opinion, on taking the two letters here referred together, that the paper left with Gosford had reference to the building of a church. Then there is a good deal of cross-examination as to whether there really were two papers in the packet or not, and it runs over pages, and the difficulty of getting anything precise is marvellous. At one time it was one document on two sheets of paper; then it is doubtful whether there was one paper or two; but at all events this is obtained, that the document, whether upon two pieces of paper or upon one, had reference to the cousin, with this exception, that part of it related to instructions connected with the property. That is what is represented in the two documents to which I shall have presently more particularly to call your attention; but in the meantime the cross-examination assumes a character of great interest, having reference to matters of exceeding moment. In his affidavit, to which I have already referred, the defendant had stated that the opening of the document by Mr. Gosford was to depend upon a double contingency, “upon events, one of which he knows has not happened, and the other he hopes has not happened.” “Now,” says the Solicitor-General, “what is the event you know has not happened? There is nothing that explains it.—My return, of course, within the time stated. **LORD CHIEF JUSTICE BOVILL:** What time?—Before she was married. It must have been that. **THE SOLICITOR-GENERAL:** You say it must be. Is that what you swear?—Well, I did not know that I had put that in.” This clearly would not hold, because his return would have put an end to the document altogether. It was a document containing, according to his account, instructions to Mr. Gosford as to what he was to do in the event of a given contingency happening while he was away. His return would put an end to the whole thing, and therefore that could not be the contingency on the happening of which the document was to be opened. The only thing that would be to be done then would be for Gosford to hand it back to him, as there would then be no longer any commission to execute. “I did not know,” he says, “that I had put that in. *Q.* But you have?—So it appears. **LORD CHIEF JUSTICE BOVILL:** This is your language from the affidavit?—Yes, I am aware, my Lord. **THE SOLICITOR-GENERAL:** This is the original affidavit, so there can be no difficulty about it: ‘with special instructions to hold the same for me as my confidential agent, and not to open the same except in certain events, one of which I know has not happened, and the other I hope has not happened?’—Well, I should think—— *Q.* Surely you cannot ‘think’ what you know.



Excuse me; what was the event which, on the 14th of February, 1868, you swore you knew had not happened?—It would be my return before her marriage. *Q.* Is that what you swear?—I do not know about swearing; it must be. *Q.* There is no ‘must’ in the case; I want to know what it is. You swore on the 14th of February, 1868, that there was an event which you knew had not happened; what was that event?—I do not know what the one could be that did not happen. *Q.* You do not know?—No, I do not know what I alluded to when I swore the affidavit.” The Solicitor-General goes on pressing him upon it, and he still adheres to what he had before said. “It must be my return before her marriage. *Q.* Will you swear it was?—I do not like swearing. *Q.* But you have sworn; you must have known some event?—It is quite true, but it slipped my memory a minute.” Then the Solicitor-General shakes before him an unpleasant reminder, which he seems to be very fond of reproducing. “Shirts and pocket-handkerchiefs. You cannot have forgotten between 1868 and 1871 what the event was which you knew had not happened in February, 1868?—It must have been. *Q.* You know it was not to be opened except in two events?—Just so. *Q.* One you know had not happened, and the other you hoped had not happened. Now, what was the event, when you were describing this sealed paper, which you knew had not happened on the 14th of February, 1868, when you swore it?—I do not know; it must have been that. *Q.* Will you swear it was?—No, I will not swear to it. *Q.* Do you mean to say that you will not swear now what that event was you alluded to in February, 1868, as one of the two upon which the packet was to be opened.”—Gentlemen, you see he had before stated that it was his return before her marriage. He sees from the cross-examination of the Solicitor-General that that must be wrong, and he now says, “It was the event of my death, of course. *Q.* The event of your death?—Yes, which I knew had not happened. *Q.* That is what you swear?—Yes, that is what I swear. *Q.* Not the event of her being married?—I think you will find it really meant that. *Q.* Is that what you mean?—I could not think for a moment what it was. LORD CHIEF JUSTICE BOVILL: Your first answer was that the first event, as far as you remember, was your not having returned before Miss Doughty was married. You thought that was what you knew had not happened?—Yes. *Q.* Now you say in the event of your death, which you know had not happened?—That was in the document. *Q.* It is what was in your affidavit: you understand that?—Yes. *Q.* Something you knew perfectly in 1868. The question is, what was the event you referred to in your affidavit which you said you knew had not happened?—I knew it had not happened: it would have been my death. THE SOLICITOR-GENERAL: Do you really mean to say that you are only under the

impression that the event you knew had not happened when you swore this affidavit on the 14th of February, 1868, was your death?

—I feel quite certain of it. Q. And you swear it?—No, I will not.

Q. Why not?—Because I could not think of it at first. Q. But you can think of it now?—Yes. Q. If you are certain why do not you swear?—Because I do not think it would be correct to do so.

Q. You do not think it would be correct to swear, although you are certain?—I feel quite certain. Q. Then why will you not swear it?—I will not swear it. The LORD CHIEF JUSTICE: Just attend

a minute, and do yourself justice. If a man is quite certain of a thing then he swears to it; if he has a doubt about it he says he will not?—Just so. At first I could not remember it, but afterwards I remembered it, therefore it must cause a doubt in some way sufficiently to make me decline to swear it. The LORD CHIEF

JUSTICE: It very often happens that a man is not certain about a thing, and when his attention is called to it, it becomes a certainty, and he will swear to it, but if it does not he will not. What I understand you to say is you feel quite certain, but will not swear it.

That, in ordinary circumstances, means you do not feel certain about it, at least so I should understand it?—I am on my oath, my Lord, and I feel certain. Q. Then you say positively?—Yes. Q. You

say positively the event was your death?—Yes. Q. ‘I say positively my death is the event I referred to as not having happened in 1868’?

—Yes. The SOLICITOR-GENERAL: What made you say just now it was your return after she married?—Because I alluded to that in the document. Q. But the event upon which the document

was to be opened, what made you say that it was her marriage before your return?—I could not really remember what it was at the moment.” No doubt there was here a sudden and remarkable change as to his meaning, and it is not to be wondered

at that he was a good deal pressed on this subject by the Solicitor-General. Now he says he feels quite certain it was his death to which he referred. He is reminded of what he had said

before, and he says, “Yes, I know that, and now will say positively it was my death which was the event I referred to as not having

happened in 1868.” Gentlemen, I feel bound to point out that the second explanation here given by the defendant is as untenable and unsatisfactory as the first. In the first place, because Roger, in the

letter to Mr. Slaughter, had expressly stated that the private wishes and intentions he had confided to Gosford were to be carried into effect “*if he lived*,” in the second, because in the event of his death the commission he had intrusted to Gosford would be superseded by

his will, under which Gosford could alone act, and under which alone he could apply a farthing of Roger Tichborne’s funds. Why then had that mysterious statement been put into his affidavit? I cannot

but fear, that whoever drew up that affidavit drew it in that form with the sinister design of creating a prejudice against Mrs. Radcliffe, and of producing the appearance of knowledge in the defendant of the contents of the packet, without subjecting him to the necessity of going into the particulars in open court.

A far more important question remained as to the mysterious reference to the event which he “hoped had not happened;” and now the Solicitor-General emphatically asks him that all-important question: “Now, what is the event which you hope has not happened?” The answer is, “That, as I mentioned before, I have a very great reluctance to state. If called upon by the Solicitor-General to do so, it must be upon his own head and on his own hands for anything I say. I have written a statement out, now in the hands of my counsel. I have no objection for you to see it, and the judge and jury.” This was a document which he had drawn up the night before, in the presence, if not with the assistance, of his attorney. I say “if not with the assistance of his attorney,” because the language, when you come to read it, would appear very much more like the language of a man accustomed to documents of that sort than like that of the defendant, with which by this time we are all of us tolerably familiar. And here again, this paper having, as the defendant stated, been drawn up at the instigation of his attorney, it occurs to me that the purpose was to obtain all the advantage to be derived from its contents, and at the same time to avoid the inconvenience of having to go into the particulars of the transaction, subject to the contradiction of the lady whose conduct was thus seriously impugned. “I have no objection,” added the defendant, addressing the Solicitor-General, “for you to see it, and the judge and jury.” The Solicitor-General knew better than to receive the private communication as proposed, and sternly asks: “What is the event ‘you say you hope has not happened’?—Will you look at that document? Q. Do not ask me questions, because I shall be obliged to make use of them afterwards: what is the event you hope has not happened?” The startling answer comes, “The confinement of Miss Doughty. Q. Do you mean to swear before the judge and jury that you had seduced your cousin?—I most solemnly to my God swear that I had.” Was there ever an appeal made to God under such circumstances? I could understand that in the assertion of innocence a witness or anybody else might appeal to God to bear witness to it, but it is the first time I ever heard God appealed to by a man who is making an assertion of a wicked and heinous sin, who stands forward to say that he has committed seduction under its very worst form—seduction which brought dishonour into his own family—seduction of the daughter of those who had been a second father and mother to him; upon whom, as well as upon their daughter,



he had brought, if his statement was true, dishonour, and shame, the mother being still alive to hear this statement made, which thus terribly struck at the character and honour, and the virtue of her daughter. I cannot conceive a greater desecration of the name of God than by an appeal to Him to bear witness to an act of this description. Without in any way seeking to set up a standard of morality which shall be higher than that which generally prevails in the world, there are certain forms and circumstances under which immorality becomes a thing that even persons the most lenient and indulgent to the frailties of men cannot but look upon with abhorrence; and one cannot well conceive a worse case of seduction than that of a man who abuses the confidence of a father and mother, who were so near and dear to him as these were to Roger, and abuses that confidence in the dishonour of their child, and who then says, that, uncertain whether or not he had brought about a state of things which could only end in her shame and ruin in life, he leaves her in fear and misery, without caring or condescending to make the slightest inquiry afterwards as to whether the terrible fears of this poor girl were well founded or not. Though he might implore mercy and forgiveness of God, that he should have desecrated the name of the Most High by appealing to Him to bear witness to the truth of so foul and wicked a deed must, I should think, shock your minds, nor will the emphasis sought to be given to the asseveration thus solemnly made add much to its effect.

Then the Solicitor-General pursues the inquiry into particulars of time and place; and, of course, in a trial of this kind, those circumstances are all-important. A woman is at the mercy of a man who brings an accusation of this sort against her, just as in the converse of the case, where a woman makes a charge against a man, as we know in our trials at the assizes sometimes happens, the man is at the mercy of the woman, unless every circumstance of time and place is carefully attended to; and that is what we do in trials of that sort, and without it justice could never be done, and innocence, often assailed unjustly, would never be vindicated and made manifest. Time and place, therefore, are of the very essence of an inquiry of this sort; and when I take you into the circumstances of time and place as regards the statements made by the defendant, and to the observations that arise upon these statements, I am sure they will have your most watchful and careful attention. For you have here a double duty—a twice-sacred duty to perform. It is not merely a question between the prosecution and the defendant, but here the accused becomes the accuser, and he becomes the accuser in a matter in which the honour, the position, the happiness of a woman are concerned; and you must enter upon that inquiry with the recollection that you are fathers, husbands, and brothers, and therefore know

what a woman's honour is, and what it is worth; and how, when it becomes implicated in an inquiry of this sort, you are bound in justice to give the case your most careful attention; that the charge, if a false one, may be pronounced and declared to be so; while, at the same time, no feeling of sympathy with the woman should warp your minds from deciding according to the truth. I am sure, therefore, that you will go carefully into the matter, though it is one that does not go to the root of this case. The defendant may be Roger Tichborne for aught, as regards this part of the inquiry, we are concerned. It may be that Roger Tichborne has brought forward this charge falsely; it may be that it is true. Independently of the bearing that it may have on the main issue of the case, it is an important issue in more than one sense to the parties concerned, and must have your most careful consideration.

Now, then, let me ask you to listen carefully to the statements or the defendant in respect of it. "When and where," he is asked, "did this happen?—It happened at the mill. Q. When?—It was not long after I came from Ireland. Q. When?—About the month of July or August. Q. What year?—1852. Q. Give me some nearer date than that?—The latter end of July or the beginning of August." It is necessary to mark the date most carefully. You will see the importance of it further on. "Q. Was it before or after the breaking off of the engagement by Sir Edward?—Before. Q. Now, then, it was before that was broken off, at the mill?—Yes. Q. Where is the mill?—The mill is almost opposite the front of the house, some distance off; it is in the village of Tichborne. Q. When in the day?—It was about four o'clock in the afternoon, I think. Q. The day of the week?—I could not tell you. Q. You cannot tell that?—No. Q. Were you staying in the house?—What house? Q. Tichborne?—I was. Q. How long before the engagement was broken off?—Probably a week or ten days. Q. That you can remember?—Yes. Q. Can you remember what it was? whether it was a week or ten days?—Not to a day. Q. Do you mean to say you left your cousin with child?—No; I do not say so. Q. You left, you know, in March, 1853?—I know I did. Q. You say you seduced her in July or August, 1852, and before the breaking off of the engagement?—Yes. Q. You have told me you never saw her but once in the village after that?—Yes. Q. And you spoke just now to me of her confinement; do you mean to say you left her with child?—I did not say so. Q. I ask you whether you mean to say it?—I tell you she wished to impress that upon me. Q. That she told you so?—That she told me so. Q. When you met her in the village?—No, I must have seen her after that. Q. Why, you told me that was the first and last time you had seen her?—Well, I believe I did. Q. When did she tell you that?—It was in November, or before

November, I think. *Q.* Where?—At Tichborne *Q.* Where in Tichborne?—I don't remember where. *Q.* You do not remember where? You can remember in what part of Tichborne she told you that?—I believe it really was when I came in from hunting *Q.* Were you staying in the house?—No, I was not staying in the house. *Q.* Where did you see her? and where did she tell you?—I tell you I met her in the village. *Q.* Did she tell you on that occasion when she met you in the village?—She certainly told me; I believe it was on that occasion. *Q.* You cannot forget. If this were true, if you had been told by your cousin what you now assert, you cannot forget it. Tell me where and when it was told you?—It was told me when I met her in the village, to the best of my belief." Everyone must, I think, agree with the Solicitor-General that it was a thing which it was morally impossible for a man to forget. If, having seduced his cousin, he was told that she had reason to fear she was pregnant, the statement must necessarily have produced such emotion, such a state of agitation and feeling—the very thought of such an event, fraught as it must have been with circumstances so calamitous, must have produced so indelible an impression on the mind of any man to whom it was communicated, that it was a thing that never could be forgotten. The remembrance of it would haunt him for a time like some fearful phantasm, some hideous dream, the remembrance of which could never be effaced. The cross-examination continues: "Will you swear it was in the village?" At last he says, "Yes. *Q.* Will you swear it was when you met her in the village?—Yes, I will. *Q.* Why would you not do that some time ago? Had you any doubt?—Well, I must have had a doubt; it was the way you put it to me that caused me to have one probably." Then comes the question, which, of course, would arise under the circumstances, namely, whether he made any arrangement with her for communicating with him if her apprehensions should prove to be true, as he was not living at Tichborne. In November he was living at Upton. According to his own account, he was staying for the moment at Winchester. Miss Doughty was under no restraint, there would be no difficulty in writing to him, and what you would have expected from a man under such circumstances would be this: he would have sought to allay her fears, to quiet her apprehensions, but would have said, "If you have reason to believe, as time goes on, that your fears are well-founded, write to me. You know I shall be in the neighbourhood, either at Winchester or Upton. Neither are far off. In an hour's time I can be by your side. Send or write to me. I can come to you at any time, and then, if the worst should happen, if your fears should prove to be true, we can take counsel together as to what will be the best thing to be done." He makes no such



arrangement at all. Nor, as we shall see presently, does he ever make any inquiry as to whether those fears were well-founded.

Then the examination is directed to the important question of when the sealed packet was left with Mr. Gosford. "Was it in November or December, 1852, as you have sworn to-day, or was it in March, 1853, as you have sworn in your affidavit?—I did not swear that in my affidavit, it was the way you read it." Then the Solicitor-General reads from the schedule to the affidavit: "'A sealed document written by me, and relating to my cousin, Katherine Doughty, and left by me with the defendant, Vincent Gosford, just previously to my leaving England in 1853;'" and in the affidavit itself you say, 'Shortly before, and in anticipation of my leaving England in the month of March, 1853.' Now was it just before leaving England in March, 1853? or was it, as you have sworn to-day, in November or December?" The answer is, "I say again, I did not say just before March: I said 'some time previously.'" The SOLICITOR-GENERAL: 'A sealed document written by me, and relating to my cousin, Katherine Doughty, and left by me with the defendant, Vincent Gosford, just previously to my leaving England?'—Very well."

Now, gentlemen, how would any one read that, and how would he understand it? Would he understand it as having happened in the month of November, 1852, or in the month of March, 1853, in anticipation of his leaving England? Of course, it all depends on the punctuation. You may read it in two ways. You may say, "In anticipation of my leaving England in the month of March, 1853;" or you may read it as a thing done in the month of March, 1853, "in anticipation of leaving England." One would think a person would hardly say, "In anticipation of my leaving England in the month of March, 1873," and say "Shortly before," as well, if he meant to say it happened in the month of November. There is a good deal of cross-examination on that point. The defendant is asked, "Was it just previously to your leaving England in March, 1853, as you swore in Chancery, or was it November or December, 1852, as you have sworn to-day, that you sealed up that document?—It was November or December, which is just previous. Q. How came you to say you wrote it and left it just previously to your leaving in March, 1853?—I call that just previous. Q. You call that just previously, do you?—Yes. Q. Did you ever make any inquiry during the year 1853 whether the event which you hoped had not happened in 1868 had happened?—During the year 1853? Q. 1853?—I did not. Q. Did you make any further inquiry at all after you left England?—No. Q. Did you make any inquiry at all between November, 1852, and March, 1853, when you went away?—I should have heard of it then, certainly. Q. Did you

make any inquiry? is my question.—I have no doubt I spoke to Mr. Gosford about it. *Q.* Did you?—I cannot say exactly. *Q.* You cannot say exactly? Did you make any inquiry?—No, I do not remember. I have spoken of it, no doubt. *Q.* To whom?—To Mr. Gosford. *Q.* You have spoken of it, you have no doubt, to Mr. Gosford, when?—When I have seen him at different times. *Q.* At what period? My question is, when did you make any inquiry between November, 1852, when you were told, as you say, this had happened, and March, 1853, when you went away?—I do not know that I made any direct inquiry. *Q.* Then did you leave this country, and Europe, in the month of March, 1853, uncertain whether the young cousin whom you say you seduced, was about to have a child or not?—No, I do not think I did. *Q.* What do you mean by that answer?—I do not think I left without making inquiries. *Q.* You have just told me that you do not remember that you did: now, I ask you again, did you leave Europe in the month of March, 1853, without satisfying yourself whether your cousin, this young girl whom you say you had seduced, was or was not about to be confined?—Well I never believed she was, in fact. *Q.* That is no answer. Did you make any inquiry?—I do not think I did ever make any direct inquiry.” There is no trace beyond this loose and doubtful statement of his making any inquiry at all.

Gentlemen, the next subject of inquiry in the cross-examination put to the defendant was, what were the contents of this sealed document. He is asked, “What was there contained in the sealed document?” The first answer is a very general one, “Certain instructions. *Q.* What were they?—Instructions about the cottages at Pryor’s Dean to be repaired, and instructions what he was to do. LORD CHIEF JUSTICE BOVILL: I did not hear you. First you say as to cottages at Pryor’s Dean, and what was the next?—Instructions as to what he was to do in the event of Miss Doughty going to be confined. The SOLICITOR-GENERAL: What else?—There was a great deal more matter. *Q.* You know the whole of the contents of it; what else was there in it?—There were instructions to take full charge in the event of my uncle and father’s death. *Q.* ‘Instructions to take full charge in the event of your uncle and father’s death.’ What else?—Instructions what he was to do. *Q.* What was he to do?—He was to make preparations for Miss Doughty to go to Scotland. *Q.* Anything else?—Yes, he was also to prepare Upton House for her. *Q.* What else, anything?—Yes, a great deal more; really I cannot bear the whole in my memory. *Q.* That was all in this paper was it?—Yes. *Q.* If you have written down anything—you offered me to look at something—look at it yourself. Is there anything else in it?—Counsel have it. *Q.* Just look at it yourself; is there anything else in it? Perhaps you can tell me without refreshing

your memory. I would rather if you can, but if not, you can look at it?—It was a long document, and I cannot remember the whole that was in it. Q. When was it you wrote that out?—Yesterday evening. Q. Who was with you when you wrote it out?—Mr. Spofforth was in the room. Q. Mr. Spofforth was in the room. Was any one else?—No one. Q. Nobody but Mr. Spofforth. Now, if you like to look at it to refresh your memory to see if you have told us the whole that was in the document, you can do so?—I do not say that I told you the whole. Q. That is what I asked you: I asked you the contents of the document, and you may refresh your memory if you like to look at it?—There are the subjects which I have told you. Q. Is there anything else, or any other subject?—In here? Q. Yes?—No. Q. Was there in the document?—Yes, certainly.” So that the paper he had written out, according to that account, did not contain the whole. “ Q. Give me a notion?—Instructions about the estate, and lots of things. Q. ‘Instructions about the estate, and lots of things’?—That is to say, a deal more than what I can remember now. Q. Quite separate from the matter of Miss Doughty?—But it was all in one. Q. The instructions about what was to be done with the estates were matters entirely apart from the question of Miss Doughty? that was to be done whatever happened to Miss Doughty?—No, I think not. Q. Explain how they were connected then?—They were instructions about what he was to do about Upton. Q. That you have told us?—Instructions about Pryor’s Dean.” Again the Solicitor-General presses upon him what he has said in his examination-in-chief, and again asks him to tell the substance of the document. He says, “I have already told you. Q. Is there anything else? Is there any other subject in the document but what you have told us? You have told us of some provision for Miss Doughty, you have told us about Upton House, and you have told us about taking possession of the estate in case of your uncle and father’s death. You have told us of repairing the cottages at Pryor’s Dean. Those are all separate subjects. Was there any other?—Yes, he was to keep the Home Farm on. Q. Was there any other serious subject dealt with, I want to know? I do not expect you will give me the very words, but any head of instructions?—I do not remember any part at the moment. Q. You see you vouch yourself as being able to repeat substantially the contents of it: is what you have told us now substantially the contents of that document? You say you have done it and repeated it to several people?—I do know it, and have mentioned it to other people, that is to say the substance of it. Q. You have mentioned it, so repeat it?—In speaking of that I meant my advisers only. Q. It does not signify to whom; you have done it, and therefore you remember it. Tell us anything else. If you have told it to



your advisers, and you have been talking it over quietly lately, you must remember?—I have not been talking it over lately at all.

*Q.* How came you to write that down?—I was requested to do so—to write down what I remembered of it. *Q.* Last night?—Yes. I think it right to tell you Mr. Spofforth never spoke to me on the subject at all any more than ask me to do it. *Q.* May I take it that there is any other serious or important matter dealt with in that document besides those which you have told us?—There are other matters mentioned I cannot remember. There may be other small matters. *Q.* Have you given us substantially the contents of the document? Is there any other serious matter?—No, according to my memory at present. *Q.* You vouch your memory yourself: you say you can tell it?—I do not vouch my memory to anything. *Q.* Have you forgotten what was in it, have you forgotten anything that was in it?—I did not expect that I could remember it word for word. *Q.* I did not ask word for word. I am asking for the heads of it. I do not think of asking for it word for word? **LORD CHIEF JUSTICE BOVILL:** When you were examined by Mr. Giffard, he asked you whether you knew the contents, and were able to repeat them, or something to that effect, and in answer you said you were prepared to give the contents?—So I am. *Q.* Whatever you were prepared to give then, I presume you are prepared to give now?—Certainly. *Q.* Very well. Are there any other matters of substance that you can remember that you can state?—No more than what I have mentioned. *Q.* You cannot state any other?—No.”

After this, gentlemen, a great deal of time was consumed in endeavouring to get an oral statement of the contents, and that went on until the Solicitor-General got tired; then he asked for the document itself, and the document was produced and put in. This is it: “Cheriton, November, 1852,” which is again repeated lower down on the page. Then it goes on: “If it be true that my cousin Kate should prove to be enciente, you are to make the necessary arrangements for her going to Scotland, and you are to see that Upton is properly prepared for her to live in until I return, or she marries. You are to show great kindness to her, and let her have everything she requires. If she remains single until I am back I will marry her. In the event of my uncle and father’s death, you are to take full charge of all the estates on my behalf. To keep the Home Farm and to repair the cottages at Pryor’s Dean. Signed, R. C. TICHBORNE.” That having been read, the defendant is asked: “To the best of your recollection, is that substantially the document?—Yes, substantially the substance of it. *Q.* Then there is no substantial thing left out in this? What do you say?—I do not profess to give the whole of it. **LORD CHIEF JUSTICE BOVILL:** You are not asked about the whole, you are asked about the substance. The

**SOLICITOR-GENERAL :** You are asked as to the substance. I must have that one way or the other. Your learned counsel has vouched you as knowing the contents. Your counsel who examined you asked if you were able to repeat the contents substantially. You say that you are, and you have done so to more than one person. I ask you again, is that substantially the document?—Yes. *Q.* Is there any substantial matter not contained in that copy, or document, or whatever you are pleased to call it?—I do not remember any at the present moment.” Then comes some cross-examination as to whether, the defendant having said there was more than one piece of paper in the packet, both formed one and the same document. “You said that in the envelope you gave to Gosford sealed up there were two pieces of paper; does that contain the substance of both the pieces of paper?—Oh dear, no. *Q.* What is in the other?—Different matters. *Q.* What?—I told you before I could not remember substantially everything. *Q.* I do not want you to. I must trouble you again. Your learned counsel, of course speaking from instructions, says that you are able to repeat, without pledging yourself to words, the contents of that document?—I have already done so.” This goes on for a long time, and no satisfactory answer is got. The defendant is then asked whether he had ever before put the contents of the document on paper, and he refers to the paper of the 2nd of August, 1867, which was what the defendant wrote out as the substance of the sealed packet the day after discovering, by the cross-examination of Gosford, that the sealed packet was no longer in existence; then this document is put in. It is necessary to read this paper attentively, to see whether it is capable of being reconciled with the later one, the last form in which the defendant gave the contents of the sealed packet. I shall have occasion, further on, to observe upon the discrepancy in certain essential particulars which exists between the two documents. The paper last produced is in the defendant’s own characteristic style; while the later paper, written at the suggestion of Mr. Spofforth, for the purpose of the trial, certainly is not. It is as follows: “The principal items of document said to be destroyed by Gosford. In the event of my father having possession before my return and also dying before my return, he Gosford was to act for me, and according to instructions contained in document I, in the first place he was to have Upton to live at, and was to manage the whole of the Estate. He was to keep the Home Farm in hand he was to shew great kindness to my cousin Kate and let her have anything she requires my cousin give me to understand that she was enciente and press me very hard to marry her before I left. I did not believe such was the case nor have I since heard it was so. allway believed it was said for to get me to marry her at once to this my father tried to persuade me it

also referred to the Village of pryor's dean. He Gosford was to have Cottages repaired improved estate in generally. Gosford was also to make arrangements for Kate to leave England if such was true. Both Gosford and wife pressed me very hard to marry at once other matters of no consequence I don't think Mrs Gosford know about Kate.—R. C. TICHBORNE."

Let us now see what is the sum and substance of the defendant's statement as given on his examination and cross-examination. It amounts to this: that at the end of July or the beginning of August, 1852, a week or ten days before his courtship with his cousin was put an end to, being with her at the mill at Sevington, on an afternoon, about 4 o'clock, he took advantage of her at that mill and seduced her; that some time afterwards, in the month of November, when he was staying at Winchester, having been out hunting, as he was passing through the village of Tichborne on his way home, he saw his cousin, got off his horse, and, leading the horse, walked by her side; that she then communicated to him her fear that she was with child; that he told her that after what his uncle and aunt had said to him he could not marry her, but that if on his return from abroad she should still be single he would then marry her; that he then went to Mr. Gosford, saw him in the parlour of his house at Cheriton, drew up a document in his presence, having mainly reference to the possible pregnancy of his cousin; read it over to Gosford, sealed it up, and deposited it with him, as instructions what he should do in the event of his cousin proving to be, as she feared, with child; that after that he concerned himself no further about the matter, and never made any inquiry as to whether her apprehensions were well founded or not. That is the sum and substance of the defendant's statement.

It involves, you see, three things, three leading facts: the seduction, the meeting with the cousin, and the deposit with Gosford of a sealed packet having reference to her pregnancy. The two first allegations, namely, the seduction of Miss Doughty and their subsequent meeting and interview in Tichborne, which he has spoken to, are positively denied by Lady Radcliffe. The third, namely, the deposit of a sealed packet having reference to the pregnancy of Miss Doughty, is as positively denied by Gosford; and therefore, as the whole must be taken as one entire story, there are two witnesses to one; but that is by no means conclusive. The two witnesses may speak falsely, and the defendant may speak the truth; and it is necessary, therefore, that we should look closely and critically into all the circumstances of the conflicting statements.

Now it is quite obvious that both the accuser and the accused in this matter come before you under considerable disadvantage. The defendant comes under the disadvantage which a man is necessarily



placed in, who, having taken advantage of a woman's weakness, betrays her to the world, and exposes her shame. If there is anything which would stamp a man with the character of a base and dishonourable person in the estimation of all men who have any sense or feeling of honour, that would be the conduct. Nevertheless, there is no rule that may not have its exception, and the question is whether this is not one of them. You see the defendant is placed in a very peculiar position. A knowledge of this document is made a crucial test of his identity. He does not himself come forward in the first instance and say, I can at once prove my identity by telling you the contents of a document which I left sealed up, and which nobody knows but myself and Gosford. It is forced upon him by the somewhat incautious conduct of Mr. Gosford. Mr. Gosford says, if you are Roger Tichborne you must know the contents of the sealed packet which he left with me ; tell me the contents. The defendant knows, or has reason to believe, that Lady Radcliffe is to be called as a witness against him. He is tied, as it were, to the stake, and although a man, if he had only his own interests at heart, might say, rather than betray such a secret as that I will forego everything, he is in a very different position when he has a wife and children, whose interests he is bound to protect. Therefore I am not at all sure that if a man found that such a thing was made the crucial test of his identity and his claim to position and fortune, he would not be bound, for the benefit of those near and dear to him, to disclose that which otherwise he would lock up in his breast as a secret, which, from a sense of honour, he would not suffer to be torn from him. More especially would this be so if the man believed that the woman who was about to denounce him as an impostor knew him to be the true man, but from base and sinister motives was prepared to deny him. That is the position in which, supposing the document to have been what he represents, the defendant is placed.

On the other hand, let us see the position in which Lady Radcliffe is placed. She, if this statement is untrue, comes forward to assert her own innocence, and is entitled to be heard as well as her accuser. But the general feeling of indignation against a man who places a woman in such a position is so strong that even the sternest moralist, the most rigid stickler for precision and truth, might say it was venial in a woman, when a man betrays her to the world, in self-defence to deny the fact, although it be true. You never can say that falsehood is justifiable, but in such a case one would look upon it with pity and indulgence. You would say it was natural that a woman, when a man is base enough to betray her and expose her to the world, if she has to meet him face to face, even if she is conscious he is right, should seek to help herself in self-defence by saying that which is untrue. But the very fact of its being almost next to certainty that under such circumstances a woman would make a false

statement in her own defence, unfortunately deprives her evidence, when true, of the cogency and effect it would otherwise have. You feel so certain that even if the accusation is true, the woman, if the man is base enough to betray her, will deny the fact—you feel that it is so natural for her to do it—so certain that ninety-nine women out of a hundred would take that course—that you cannot attach much confidence to the statement that a woman makes under such circumstances; and the result is that where she is innocent and her denial is true, it fails to insure the belief which it ought to command. So that while on the one hand there is a feeling of indignation against the man who makes such a charge, there is on the other a feeling of distrust as regards a statement which a woman may make in denial of it. That is the position in which Lady Radcliffe comes here to give her evidence. We, therefore, must look at all the surrounding circumstances, and see on which side we believe the truth to be, without suffering our indignation against the man to lead us too hastily to refuse credit to his statements, if they are entitled to credit, or, on the other hand, allowing a suspicion of a woman's denial made under such circumstances to operate unduly to the disadvantage of Lady Radcliffe.

Let us hear what she says. “You were present in court when the defendant was examined, I think, with reference to Roger Tichborne's attachment to you?—Yes, I was. Q. Was there ever any familiarity between yourself and Roger Tichborne other than that of which you have told us this morning?—No, never; never. Q. Now I must put to you the language of the defendant himself. Did you hear this question put to the defendant by the now Attorney-General: ‘Do you mean to swear before the judge and jury that you had seduced your cousin?’ You heard that question put?—Yes, I did. Q. Did you hear the defendant, in answer to that question, say, ‘I most solemnly to my God swear that I had’?—Yes, I did. That is perfectly false. Q. Utterly false?—Utterly false. Roger would never have thought of such a thing—never. Q. Was there one syllable of foundation for such a rumour even?—Never. Q. You heard him also speak, under examination, of a meeting which he alleged had taken place between you and himself later on in that same autumn?—Yes, I heard it. It was a fabrication from beginning to end, not a word of truth in it. Q. Did you ever see him in the village of Tichborne at all after the month of June, 1852?—No, never. I never saw him anywhere, not at Tichborne or anywhere else. The LORD CHIEF JUSTICE: He did not get off his horse and walk with you?—No, my Lord. I never saw him after the 22nd June. Mr. HAWKINS: You heard him examined, and you heard him give the details of these matters?—Yes, I did. Q. You heard his evidence on that subject from the beginning to the end?—I did. Q. Without troubling you by going through the details, was there

one syllable of truth in any one assertion that he made on any one of those matters?—Certainly not, not one single word, and God knows I am speaking the truth.” Here there is also an appeal to God, but it was an appeal to God to bear witness to innocence, not an appeal to God to bear witness to sin and shame.

Gentlemen, as I just now said, in a matter of this kind we must look closely to the particulars of the transaction to which the accuser speaks, especially to the particulars as to the time and as to the place. Now the time which he alleges as the date of the seduction—for it is with that subject I am at present about to deal, leaving the meeting and the sealed packet itself for future consideration—the time he alleges was at the end of July or beginning of August, when he was staying at Tichborne. But I think it is perfectly clear from the correspondence, that Roger Tichborne was not at Tichborne either in the month of July or the month of August. His regiment was then stationed at Canterbury, and he himself was with the regiment, and, being always an active correspondent, he was at that time carrying on his correspondence both with his aunt, Lady Doughty, and with Mr. Gosford, and occasionally with his father and mother. I will recall to your memory the dates of those letters, to show you where he was during the months of July and August.

I will first call your attention to the dates of the series of letters written in these two months. Having received a letter from Lady Doughty of the 1st of July, which, without formally putting an end to his relations with his cousin, still practically extinguished his hopes, he writes to Mr. Gosford on the next day, the 2nd of July, and declares it to be his intention “not to go back to Tichborne for a long time to come.” A few days afterwards he writes to Lady Doughty, in answer to hers of the 1st of July, and at the close of it says: “It is not my intention to go to Tichborne again for a long time to come, unless you and my uncle express a wish to see me either now or during the leave, if I apply for it during the winter.” Lady Doughty did not wish him to come, as we know, and certainly did not express a wish he should do so. Then we have him going to assist Mr. Danby Seymour at the Poole election, and on his return, or when he was about to return, he writes to Gosford, as also to Lady Doughty, asking her to meet him at Winchester, which letter is dated the 7th of July. He goes back to Canterbury, having missed Lady Doughty on the way, and on the 13th he writes again to Mr. Gosford, desiring him to send his things to him, as he does not intend to go to Tichborne again. Again, on the 18th of July, he writes to Mr. Gosford, and says: “I have not heard from Tichborne since I received your last letter.” Now a man who says he has not heard from a place is not likely to have been there, because if he had been there he would not have expected to hear from it: therefore, when, on the 18th of July,



he writes to say he has not heard from Tichborne since his return, and since Gosford wrote last, it stands to reason he could not have been at Tichborne in the meantime. He writes again from Canterbury on the 19th of July. On the 25th there is a letter from Lady Doughty showing he could not have been at Tichborne in the interval, as she writes, "Every post since my last letter have I been hoping to have the pleasure of hearing from you and daily disappointed. I have therefore resolved to write to induce you to break a silence most painful." Of course, that is language which could not have been addressed to a person whom she had seen within the last few days; therefore, up to that time he could not have been at Tichborne. On the 30th of July he writes to Mr. Gosford: "I am in a fix; I have just received a letter from my father informing me of his arrival at Tichborne. He expresses very strongly his wish that I should go to Tichborne for a short time, during the time he will be there with Alfred. That is a thing to which I strongly object. He said, moreover, that if I cannot go there he will come and see me at Canterbury. I don't fancy at all his coming here, because the very first thing he does in those cases is to tell all my brother officers what are my prospects in life. Well, that is not pleasant. The only thing which I have to do is to obtain two or three days' leave and to go to London. I shall write to enquire when he will go to London, and tell him that I have some important business which I am obliged to settle in town, and if he likes (as I hope he may) to come and meet me there. Pray write to me by return of post to let me know when he intends going to London." Clearly all this time he is not only not at Tichborne, but he has no thought of going there; even when his father begs him to come there, he makes some excuse and forms some other arrangement, in order to avoid the necessity of going there. That concludes the month of July. Therefore, neither the discovery respecting his attentions to his cousin nor the seduction can have occurred in July, as the defendant distinctly says that both occurred when he was staying at Tichborne. Let us next try August.

On the 2nd of August Roger writes to his mother from Canterbury. On the 3rd, writing to Mr. Vincent Gosford, he says, "I could I believe obtain few days' leave during the week, but I shall not apply for it as if I went my father would write to me to express his wish that I should go down to Tichborne to spend some time with him." In order to avoid the necessity of going to Tichborne, or disobliging his father, he will not ask for leave at all. On the 7th of August he writes from Canterbury to his mother. On the same day he writes to Mr. Gosford, "I have not heard from Lady Doughty for a long time." As I said before, a man does not write in that manner about not having heard from a person if he has been where that person was. On the 8th of August he writes to Lady

Doughty: "It is long since I last had the pleasure of receiving a letter from you." Again, I say he would not have used that language if he had seen her in the interval. On the 10th he writes to Mr. Gosford: "It is some time since I last received a letter from you. \* \* \* I hope that nothing unpleasant has taken place between my father and my uncle. I have not heard from Lady Doughty for a long time. I fancy she must be by this time back at Tichborne. I fancy that she has asked you if you heard from me. I wrote to her yesterday." Lady Doughty had been at Ryde. Therefore, up to the 10th, the date of that letter, he must have been at Canterbury. Then there is an interruption in the correspondence with Lady Doughty, owing to the serious illness of the uncle, it being supposed that he was dying. He must have written to inquire about his uncle, because on the 25th she writes to him: "Thanks for your kind enquiries, at which your dear uncle is also much gratified; he spoke of you again to me with the greatest affection. When he thought *himself dying* he said, 'Give my love and blessing to dear Roger, and my hope that the time is not far distant when he sells out and settles down, and truly glad I should have been to have seen him make a happy marriage.'" On the 30th of August he writes a long letter to Lady Doughty, in which he gives her an account of what has been going on at Canterbury during the preceding fortnight, in the way of cricket matches, and races, and balls, showing that he himself had been there, a witness of all the things that had been going on, and himself participating in some of them. He adds, "I suppose that my father and Alfred have by this time left Tichborne. I have not heard from my father for some time." These letters and these dates entirely confirm the positive statements of Lady Doughty and Lady Radcliffe, as well as of the Nangles and Mr. and Mrs. Gosford, that Roger Tichborne was not at Tichborne during these months of July and August. So that in these two months, during which, at some time which he does not more precisely fix, saying only "July or August," the defendant says this took place between his cousin and himself, it would certainly seem to be impossible with reference to the time he thus gives. But his learned counsel appeared to treat this discrepancy with indifference. He says, he will not be bound by dates, and that though his client might have said it was at the end of July or beginning of August that the discovery took place, and that the seduction happened some week or ten days before, which would bring it to the middle of July, it would not signify if it should be proved to demonstration that it did not happen then, because he says it might have happened on the occasion of the visit in June. We have here the old story of the wolf and the lamb. "You reviled me last year," says the wolf. "I could not have done so," says the lamb, timidly, "I was not then born." Then says the wolf, "If it was not you, it was your father." "Sir," says the lamb,

“it could not have been my father, because at that time he had been killed and eaten.” “Never mind,” says the wolf, “if it was not then, it must have been at some other time.” And so he devours the lamb. In the same way the learned counsel makes dates shift to suit the requirements of his case, and says, if it was not at the date given, it must have been at some other time. If it was not in July or August it must have been in June. And it is undoubtedly true that Roger Tichborne was at Tichborne from Saturday, the 19th, to Tuesday, the 22nd, of June, and upon either one or other of these days what he alleges might have taken place.

Let us see how that stands. There were certainly those two days, the 20th and 21st. Roger left on the 22nd. The seduction is alleged by the defendant to have taken place about four in the afternoon; Roger left in the middle of the day; he left after lunch; therefore it could not have taken place on the 22nd. It could not well have taken place on the afternoon of the Saturday, because they did not go down there till the Saturday, and could not have arrived at Tichborne till late in the day; but there are the 20th and 21st, and on one or other of those days no doubt it may by possibility have happened. And as the defendant says that the seduction took place a week or ten days before the discovery, if the discovery could be taken to have occurred, as the defendant put it, in July, the time would sufficiently correspond. But then, as I have pointed out, the only state of circumstances that can possibly be called the discovery occurred in January, and to suppose that the seduction took place before January would be, with reference to the alleged conversation in November, altogether absurd. Nine months would have elapsed since then, and there could have been no uncertainty as to whether pregnancy had resulted or not. Again, if the seduction took place on the occasion of this visit to Tichborne, one would have expected the defendant to have remembered the other incidents of that visit—Roger’s joining his aunt and cousin in London, his going down with them to Tichborne, the appeal to the uncle to allow the marriage to take place at once, the giving of the paper to Miss Doughty recording the vow to build a church if the marriage took place—as to all which important incidents the defendant is silent, and of which he evidently knows nothing.

So much as to time. Next comes the question as to place, and the place is fixed by the defendant: it occurred, he says, “at the mill;” and if there could be any doubt about it on the cross-examination, it is fixed irrevocably by the answers given on re-examination. Serjeant Ballantine says to him: “There is one other matter I wish to ask a question about. In the progress of this case there has been a mill spoken of; is that place still in existence?—It is. Q. The mill which you referred to is still in existence, is it?—Yes. Q. Is it used now as a mill, or has it only that name? Is it known by that



name?—Yes. *Q.* Did you say it was used as a mill now?—It is a mill now. *Q.* Where exactly is its situation?—At the end of Tichborne. *Q.* Do you mean at the end of the village of Tichborne?—Yes, near the village; it joins the bridge at Sevington.”

Upon this let me ask, in the first place, what you think any one would understand by the term used by the defendant, “at the mill.” Would you understand that to be in the mill? or, at any rate, some building immediately connected with the mill? or would you expect it to mean something outside of the mill, a place separated from the mill by some hundred yards at least? If it was said that “at the mill” does not necessarily mean in the building appropriated to the working of the mill, but may mean the miller’s house, I should have no objection to accept that. I think that might, by reasonable intendment, be considered as within the term used, but certainly I should suppose when you say a thing happened at a mill, you would mean either in the mill itself, or in some place immediately connected with the mill.

Now any idea of its having happened in the mill would be preposterously absurd. No one would suppose Roger Tichborne would take his cousin to the mill at Sevington, where the miller and his men were at work, and take advantage of her there: the thing is out of the question. But it might be in the miller’s house. We know the miller has a house there pretty handy to the mill. Of course the miller’s house has a parlour; it has bedrooms upstairs. Was it meant that whatever took place between the two cousins took place in the miller’s house? That, at all events, has not been attempted to be made good on this trial; and it could not be, for the best of all possible reasons: we know that the house was inhabited at that time by Mrs. Coles, the mother of Mrs. Burt, and by Mrs. Burt, then Miss Coles, and her brother, and we may be quite sure that if there had been any such thing as the loan of a room in this house at that time—if Roger and his cousin had come and asked leave to sit in the parlour—I do not suppose they would have had the barefaced audacity to come and ask to have a bedroom placed at their disposal—if they had come and asked to sit in the miller’s parlour, which they would not have done without leave, you may depend on it you would have had Mrs. Burt to tell that story; and she would never have waited to tell it here; it would have been all over the village within twenty-four hours after it happened. Certainly she would have told it to us here. She tells us she and her brother gratified their curiosity by watching Roger and Miss Doughty. If she could have made the story worse, I cannot doubt she would have done so. She showed no friendly disposition towards Lady Radcliffe, and every disposition to befriend the defendant, whom she declares to be Roger Tichborne. But, is it at all likely—one must ask oneself this question—that while Roger Tichborne was

living in the same house, as the defendant represents it, with Miss Doughty, with all the facilities which a common residence afforded, if these parties had been so forgetful of what was due to themselves as to anticipate the joys of that marriage which they at that time both hoped might take place, they would have gone to the miller's house as a place in which to gratify their passion? It may perhaps be said they did not go there with that intention, but that passion overcame the lover, and he prevailed over his mistress there. That certainly is possible, though it is quite impossible to suppose they went there for the purpose. But is it likely? These two people living in the same house are not in the position of two lovers who are carrying on a clandestine correspondence, and who have no means of meeting except at some place of assignation; that was not the case here. Is it likely that with the abundant opportunity which might have been found elsewhere, they would expose themselves to the obvious risk of being surprised by any of the people of the mill.

But if to any statement that the seduction took place at the mill or the miller's house, an apparent answer would have been found in the inherent improbability arising from the fact of their living in the same house, and the facilities which a residence in a house common to both would have afforded, how much stronger does that argument become when we are asked to believe that it was not in the mill, or in the miller's house, but in the open, exposed place called a "grotto" that this took place—a statement, it should be observed, brought forward for the first time on the present trial, and never at any time asserted by the defendant himself, who only speaks of the thing as having happened "at the mill."

Now, this so-called grotto is a place some hundred yards or so from the miller's house, reached by a path which runs along the side of the river. This representation, now for the first time put forward, in which the scene of the seduction is shifted from the mill to the grotto, rests on the evidence of Mrs. Burt, the daughter of the woman who at the time in question occupied, and with the assistance of the witness's brother worked the mill, the three living in the house adjoining. She tells us that, in "the autumn" of 1852, she saw Roger Tichborne and Miss Doughty first sitting together on a stile in the neighbourhood of the mill, and then saw them pass in front of the house, and that she and her brother watched them till they saw them go down into the path leading to the grotto, after which they lost sight of them. Of course one purpose of this evidence is to suggest—it being, for the reasons I have pointed out, utterly incredible that the seduction could have been effected at the mill or the miller's house—that it might nevertheless have happened at this grotto, and that the defendant's statement that it happened at the mill will be sufficiently satisfied by showing that it might have taken place at a

place in the neighbourhood of the mill. Added to which it may be said that the fact of two young persons going by themselves into a retired place of this kind implies a degree of familiarity calculated to give colour to the statement of the man that he took advantage of the opportunity thus afforded.

The statement of Mrs. Burt is positively contradicted by Lady Radcliffe, who denies ever having gone into the grotto on this or any other occasion. But Lady Radcliffe is deeply interested in the matter, and may deceive us. Let us examine the story on its own merits. Mrs. Burt, in answer to a question from Dr. Kenealy, who asks about what month of 1852 this was, answers deliberately, "It was in the autumn. The sun was on the decline. I can bring it to my remembrance by knowing the sun was on the decline in the autumn. The LORD CHIEF JUSTICE: What do you mean?—Going down: not so high up in the skies—later than midsummer. Mr. JUSTICE MELLOR: You mean that the amount of the sun was lessening day by day?—Yes." On cross-examination the meaning of the witness is made, if possible, still clearer. She had said, with reference to another matter, that she was not at home in July, 1852. She is asked by Serjeant Parry, "There is a date you mentioned in reference to seeing them going about this path into the grotto. Just tell me as near as you can that date?—I cannot. The sun was in its decline—it was in the autumn. I was away in July, 1852, and returned at the end. It must have been after that; how long I cannot say. It is twenty years ago, and I cannot recollect whether it was a month or two afterwards. I recollect the sun was in its decline perfectly well. Q. Can you say whether it was September, October, or November?—The only way I can fix that on my mind was being called to see Roger and Miss Doughty sitting on that stile, and I had to put my hand up to my eyes to shade the sun. Q. What stile?—That I saw them sitting on. Q. But the question was about the grotto? It is about seeing them go into the grotto?—From this stile. Q. From the stile?—From this stile I saw them go down into this grotto. Q. Was it the same occasion? You mean the same time you saw them sitting on the stile?—The same afternoon I watched them down into the grotto? Q. Watched them, did you?—Watched them. Q. Watched them! I should like you to tell me, if you can—as nearly as you can—what you believe to be the month you saw them?—I cannot fix it nearer than I have already done. Q. Nearer than that?—The sun going down. Q. The days were getting shorter?—Yes, to close in."

It is plain from all this that what the witness meant to say was that the time was in the autumn; or, if in the summer, when the summer was far advanced and the sun had begun to decline. She does not put it as a matter of memory, in which case it might be a



mere mistake, but she fixes it by a circumstance : she remembers the sun being lower in the heavens than it is in the height of summer, and that she had to put up her hand in consequence to shade her eyes from the sun while she was looking at Roger and Miss Doughty when sitting on the stile. Now all this was very well so long as the defendant's statement stood, as given on the former trial, that the seduction took place at the end of July or beginning of August. But when it is made plain, from the correspondence and the facts, that Roger Tichborne never was staying at Tichborne (as the defendant states he was when this happened) after the 22nd of June—which perhaps was not sufficiently borne in mind when this witness was called—and the learned counsel, feeling the force of the evidence as to this fact was compelled to say that the seduction had happened on the occasion of that visit, the evidence of Mrs. Burt falls hopelessly through. From the 19th to the 22nd of June is certainly not the time when it would occur to any one to say the “sun was on the decline,” or that for that reason “it was after midsummer.” It is clear, therefore, that if Mrs. Burt is speaking the truth in saying she saw Roger and Miss Doughty go down towards the grotto—which, however, that lady denies—it must have been in the autumn of 1849. Roger, having left Tichborne on the 9th of August of that year, was again staying there from the 15th of October till the 22nd, and may possibly have taken his cousin to see this place, though Lady Radcliffe may have forgotten it. There is no other year in the summer or autumn of which Roger and Miss Doughty were at Tichborne at the same time. Having heard of the defendant's statement as to the seduction of his cousin in 1852, and being anxious to assist him, the witness has probably persuaded herself that she saw in the latter year what she in fact saw three years earlier.

Another and an equally serious difficulty in the way of accepting the suggestion that the seduction took place at the grotto, is that nothing of the sort has ever been said by the defendant. Both on cross-examination, when pressed as to where the fact occurred, and on re-examination, he says it happened at the “mill at Sevington.” Is it likely that if the fact in question had been attended by the remarkable circumstance of its having happened on the descent of these parties into this “spelunca,” or grotto, the defendant would have failed to remember or mention it? The more so as Serjeant Ballantine thought it necessary to inquire of him whether the mill was still in existence, which naturally would have brought to his mind the fact that it was not at the mill itself, but at this grotto, a hundred yards from it, that the occurrence took place, and so he would have been led, one would suppose, to correct his previous statement and explain how the fact stood.

A further difficulty arises from the nature of this place. We must not allow ourselves to be led, by the use of the term "grotto," to assume without further inquiry that we are dealing with some inclosed place or cavern—some secluded and inaccessible spot shut out from the view and sight of all mankind.

A photograph was produced which was said to represent this grotto, and no doubt the photograph gave you the idea of a place covered in by trees, where two lovers might have found a place of shelter, and a place of convenience, if they had been desirous of finding one. I cannot give you personal evidence of what the nature of that place is. I only wish you had seen it yourselves, or some of you had seen it, who could report to the rest; but one thing is quite certain, there is nothing to prevent anyone from going straight down to this grotto. Anyone can walk straight down to it. You have to go in front of the mill; that is apparent from the picture of the mill which we had produced before us, and from Mrs. Burt's evidence. You pass in front of the miller's house, right in front of the windows; there is a little garden across which any one may be seen passing, as a matter of course. Then you go down, by a slight descent, to a walk by the river's side, exposed to view from the river, and from a footpath on the other side of the river; you walk about a hundred yards, and then you come to the place. A public footpath runs parallel with it, along the field above it, from which you may look down upon it. It is not represented to us as a grotto with an alcove, or something to cover the persons in it from view on all sides—nothing of the kind. There had been, as Mrs. Burt tells us, some stones and shells put in to make it look a little like a grotto. She describes it as "a long walk by the river side, cut close to the river side, entirely shaded over with trees, into which you entered by a little wicket." At the end of it stones had been placed here and there in the bank, and she says there was a rustic seat or two. I asked, "What was the grotto made of?" to which the witness answers, "There was such a number of stones put there that we called it the grotto. MR. JUSTICE MELLOR: Covered only by the trees?—Only covered by the trees. THE LORD CHIEF JUSTICE: It is absurd to call that a grotto?—My Lord, we gave it a nickname when we were children. THE LORD CHIEF JUSTICE: It does not depend upon the name you gave it, but what the thing really was. If I understand you, it was only a walk with stones laid about it?—Yes, my Lord." It is clear from the picture that the entrance to the path leading to that grotto could be seen from the house; and we are asked to suppose that these two persons went down into it, passing by the front of the house, in the broad daylight of a June afternoon, at four o'clock, and there in the open day gratified their illicit passion. Would a common

strumpet have done such a thing? Here we are dealing with a young lady, delicately brought up, trained to habits of modesty and virtue. Do you think it likely that she would have submitted to her lover under such circumstances? The man was one whose wife she hoped to become, and at that time she had no reason to suppose that that hope and expectation would end in disappointment. Was she likely to have yielded to her lover anywhere? That is the first question. I may be told that such things do happen. It may be so. I remember that in the great German play, when Faust reproaches Mephistopheles with the ruin of the girl whose innocence and happiness he had destroyed, the mocking answer of the fiend is, "She is not the first that has fallen;" and I do not say there is any impossibility of Miss Doughty, any more than others who have fallen, being proof against seduction; but I must say it does seem to me a strange and incredible thing, Roger Tichborne's approaches having been up to that time of the most respectful character—for it is impossible to read the documents we have before us and not be satisfied that he treated her with all the respect a man would show to a girl whom he honourably loved, and whom he hoped to make his wife—that coming on a visit for three days, and still wishing above all things to marry her, he should take her with him to an open place, and there take advantage of her, and that she, instead of being indignant at such an attempt, should yield to him with a facility which only the most wanton strumpet could be supposed to have exhibited.

And here it occurs to me that it was a few moments only before leaving Tichborne for the last time, and when, if the defendant's statement be true, the seduction of his cousin must already have been accomplished, that Roger placed in the hands of his cousin the paper recording his vow to build a church, if, through the intercession of the Virgin, the marriage should take place. I know not what you may think about it, but I own it strikes me that the fact of the drawing up of the paper containing the vow to build a church to the Virgin, if, through her mediation, the marriage should take place, and giving it to Miss Doughty, tends strongly to make us think that the statement of the defendant, or the statement of his counsel, that he had at that time seduced his cousin, is impossible. Would a man who, although he might not be practically a devout man, yet had a fervent faith and belief in the religion which he professed—would that man, do you think, reeking from pollution, having just before committed an outrageous sin in the seduction of this young girl, invoke, under such circumstances, the intercession of the Virgin, and ask for the blessing of Heaven on a union which he had already desecrated and rendered unhallowed, if ever it should take place, by an anticipation of that which only the solemn rite of marriage could



sanction? And here I cannot help observing, that if you see reason to disbelieve this part of the story, we shall not have far to go to find its origin. Mrs. Burt's brother, who is now dead, was one of the first persons who adhered to the defendant, and he became one of his partisans. If he or his sister ever saw the two cousins in the neighbourhood of the mill—a thing by no means unlikely to have occurred in 1849—and fancied there was any love-making going on between them—and mentioned the fact to the defendant, it may have suggested to the latter the idea of laying the scene of the seduction at the mill.

It is, however, necessary to bear in mind that, in support of the defendant's statement, witnesses were called for the purpose of showing that there was a greater degree of intimacy between the defendant and Miss Doughty than she has been willing to admit, with a view, I suppose, of making it more probable that what the defendant alleges did in fact take place. Thus we have Mrs. Burt speaking about their going down to the grotto. If she did see this, as she states, it certainly could not have been at the time to which she speaks; for the reason I have mentioned it could only have been in the autumn of 1849. Lady Radcliffe denies ever having been there with Roger, or indeed ever having been there at all. It is possible she may have forgotten it. This witness further states that she met Roger Tichborne and Miss Doughty riding together, coming from Tichborne Downs, in the month of June, and she fixes the date precisely by saying that she was on her way to an annual pic-nic, held on the Downs, while the two cousins, having gone too soon, were on their way back. She says this must have been in 1850 or 1851, as she did not go to this pic-nic in any other year. She says she could not have gone there in 1852, as she was not at home in that year at the time the pic-nic was always held. Yet this cannot be correct, for we know, as a matter of positive certainty, that Roger was not at Tichborne in the summer of either of the years she gives. Then there is Ann Mines, at one time a housemaid in Lady Doughty's service, who said she remembered that when going to a fair at Alresford, in 1848, Roger and Miss Doughty overtook her on horseback, and the thong of his whip accidentally struck her face. That on other occasions she saw them in the green lanes outside the park, and in other places, sometimes on foot, and sometimes riding. Once she saw Roger laying sticks down to make a kind of bridge for Miss Doughty to walk on. She saw him with Miss Doughty on two or three occasions sitting on the stile facing the mill at Cheriton, once in the afternoon, and the other time might be in the forenoon before the fair. She says she was then between eighteen and nineteen, and should think Miss Doughty then was as old as herself, if not older. Now we know at that time Miss Doughty's age was only fourteen. She fixes all this very positively as happening in 1848, from the time of her going into Lady

Doughty's service, and speaks doubtingly as to having seen Roger in 1849. But the thing could not have happened in 1848, for Miss Doughty, as we know from her evidence and diary, as also from the distinct statement of Lady Doughty in one of her letters, was not at Tichborne in that year at the same time as Roger, and did not see him till the spring of 1849. But what the witness is speaking of might have happened in the latter year.

Next, Caroline Skates, the landlady of a public-house at Petersfield, who formerly was in the service of the Godwins, and remembered Roger often at Tichborne from the time he went to Stonyhurst, and used to see him when he came to Tichborne. She speaks to having met him on several occasions with Miss Doughty; once near the Lover's Seat, coming from Tichborne Downs, just out of the avenue outside the park. She thinks they must have been in the act of sitting down on the seat to rest, because she only passed them, and there was only the time of day passed between them and herself. She also met them near the Crawls, and once at the stile at Bransworth Row, when she was going to Cheriton "Maying." Roger asked her what the band was playing for, and she said it was the "Maying," the name given to a dance. She lived occasionally as servant to Mr. Tilt, the priest, when he was ill, or his servant had left him, and Roger and Miss Doughty came there on several occasions, and she let them in at Mr. Tilt's door. In cross-examination she stated what indeed we know, *aliunde*, that the Lover's Seat is an open one, on an eminence, from which there is a fine, extensive view of Tichborne Downs, and that it could be plainly seen from the Downs. She said she made her statement at the time of the first trial to a gentleman who was with Mr. Onslow down at Ropley, and again three or four months ago at a meeting at 'The Anchor' at Ropley. At this meeting she asked the claimant "if he remembered when she passed him and Miss Doughty at Bransworth stile," and he said "Yes." She also asked him "if he remembered when he asked her what the band was playing for," and he smiled, and said, "I remember something about it." On her then saying, "I remember seeing you near the Lover's Seat with Miss Doughty," he said, "You are right." And when she said, "I remember seeing you with Miss Doughty walking round Crawls, when you were coming from Alresford," he answered, "Very likely you did." And then the witness added, with much simplicity, "I thought if he was what he was represented, an impostor, he could not have answered me those questions." She goes on to state that Roger spoke very much like a foreigner when he first came over from France, but afterwards he grew and talked better; that the voice of the defendant, four months ago, was like the foreign accented voice of young Roger Tichborne. On re-examination, she states: "At the

time of Roger's leaving Tichborne there was something unpleasant about his going away ; there was an intimacy between him and his cousin that led him to go. He was very fond of his cousin, and Sir Edward did not approve of it. There was too great intimacy springing up between them. That was the village talk, and the talk of the servants." And on her examination by the Court, she added that she never knew him stay at Tichborne House for months: it might have been a fortnight or three weeks. It was in the summer time of the year before he left England in 1853 that she saw him walking with his cousin. She could not say whether it was that summer, or the summer before ; but she saw them walking together on several occasions, but could not tell whether it was in one or two years. Now, we know she could not have met them together so often in the summer of 1852, because Roger was only two days at Tichborne. She could not have met them in the summer of 1850, or 1851, for Roger was not there at all. She could only have seen them in the summer of 1849. Then Mary Ann Byles, whom I have before referred to, as speaking to the identity of the defendant, says that she has often seen Sir Roger walking and riding about with Miss Doughty without any other person. Once in Tichborne Park she saw him take a hurdle stake from a hedge and plant it in a sort of rivulet that ran through the park, to enable Miss Doughty to use it as a leaping pole to leap over the rivulet. But she would not try it ; she was afraid. On another occasion when she says she saw them in the park, Mr. Roger was making what she calls jumping stocks, that is two sticks planted, and then one across, for Miss Doughty to leap over. Once she met them on the road from Cheriton Mill. Once she saw them sitting in a small plantation, a row of trees or copse, in the park. She has seen them together coming to the priest's, the Rev. Mr. Tilt's, in the village, whose servant she sometimes was. She gives first the autumn, then the winter of 1849 as the date. It may have been either.

Next Charles Guy, a labourer on the Tichborne estate, speaks to having seen Roger Tichborne at different times when he was on a visit, walking on the coach roads and in the bye-walks, where the witness was at work, along with Miss Doughty. The bye-walks are round Tichborne Park and the estate. He says, "I saw him walking up the park many times, and round the bye-walks and coach roads with her, and often in the walks round the garden and home farm." The path where he has seen him walking with her he describes as at the back of where Noble lived, being grounds attached to the mansion, with a little wicket and locks to them, where no one could go but themselves. It turned out that these walks he was speaking of were walks close to the house and gardens, the gates of which were sometimes kept fastened, because the road to the house



went through them. There was nothing of secrecy connected with them. Bogle, too, was examined on this part of the case. But his evidence comes only to this, that from the windows of Sir Edward Doughty's room he has seen Roger Tichborne and Miss Doughty going in and out together walking, sometimes with others, sometimes alone. With all his opportunity of observing, he has not a word to say of any improper familiarity between Roger and his cousin.

Then we have the witness Charles Lewis, to whom I have before had occasion to refer, the apprentice or shopman to Mr. Ramsay, the draper at Alresford, who speaks of having seen Roger Tichborne and Miss Doughty together under a variety of circumstances. He says that having been ordered to go to Tichborne House by Mr. Ramsay to show Lady Doughty some goods, he met, about a hundred yards from the park gates, inside, Mr. Roger and Miss Doughty; he thinks in the year 1846. Miss Doughty told him he was her cousin from Paris. If this be true, Miss Doughty would have been at that time twelve years of age, when we can hardly suppose there was any love-making between her and Roger. Then, he says, "I have seen Roger walking outside the park with Miss Doughty, and walked with them at Cheriton and in Cold Harbour. I know a place called the Lover's Seat—that is Cold Harbour. I have seen Roger and Miss Doughty there, three or four times and more at the same place, the Lover's Seat." After which he thinks it necessary to say that "on one occasion he was not very well pleased because he thought Roger had got one of his girls." This, he says, was between four and five in the evening in the harvest time, and he thinks in 1849. It certainly could have happened in no other year, as in no other year was Roger at Tichborne when Miss Doughty was there, except in the winter. In that year Roger remained at Tichborne till the 9th of August, after which he was away until the 15th of the ensuing October. This witness further tells us that amongst the questions he put to the defendant to test his identity he asked him, "if he remembered the last time he saw him or spoke to him—where it was; if he was standing, sitting, or riding; who he was with, and what he did." Then, says the witness, "he considered for a few minutes, and said, 'The last time I saw you I was riding with my Cousin Kate; I saw you in front of Brand's, the keeper's. I struck you with the whip and wished you good-bye; that is the last time I ever saw you'—and those answers were correct." This, he says, occurred within a day or two of Roger's going away to join the army. There is, therefore, nothing impossible as regards the date, as Roger was then at Tichborne; but Lady Radcliffe, on being asked as to this, contradicts the whole of this man's statements, denying that she introduced Roger to him as her cousin; that he ever walked with her and Roger; that he ever saw them sitting at the Lover's Seat;

and, lastly, their meeting him on the occasion to which he last spoke. You will remember the witness, and must judge which of the two is best entitled to credit at your hands.

Then there are two witnesses who speak to having seen Roger and Miss Doughty together at Upton. The first is Thomas Dymott, a gardener, who says he has seen Miss Doughty walking with Mr. Roger Charles Tichborne in the Bound Road at Upton, more than once in the afternoon, sometime between 1847 and 1852. "The last time I ever saw them was after partridge-shooting began in 1852. Miss Doughty used to come there to stop sometimes." The latter statement is simply absurd. Miss Doughty was not at Upton in 1852 at all. But the witness may have seen them together there in 1850 or 1851, though certainly not at the time of partridge-shooting. But he speaks to nothing more than having seen them out walking.

Then the witness, Angelina Homer, makes a statement which appears to be involved in some difficulty. She was under-laundry-maid at Upton, and says that on one occasion when she was hanging out clothes at the back of the house, she saw Miss Doughty coming across the park, when Roger went towards her and caught her by the hand, and she "thought they were at play." With reference to the date of this, she says she first entered the service of Sir Edward and Lady Doughty in 1848, being then seventeen, and remained in it two years and three weeks, with an interruption of several months, owing to illness. Now, in 1848 and 1849 Sir Edward and Lady Doughty were not residing at Upton, which was then let to Lord and Lady Dormer (of which fact the witness had no knowledge), and she, therefore, could not at that time have been in the service of Sir Edward and Lady Doughty, nor were they or Miss Doughty staying at Upton in those years. The Doughtys were, however, there, as was also Roger Tichborne on a short visit on his way to and from Paris, in the winter of 1850-51, and they were all there again in July, 1851, and what the witness speaks of may have happened on either of these occasions. But if it did, any familiarity she witnessed must have been of an innocent character, as we know from Roger's own written statement that it was not till January, 1852, that he became aware that his cousin entertained a decided partiality towards him. The witness appears to have attached no importance to the incident. She thought "they were at play." And she further says, what appears very strange, "I did not think but what they were brother and sister." It seems difficult to suppose that this woman can have been two years in Lady Doughty's service without knowing that Miss Doughty had no brother.

In calling attention to the difficulty in respect of dates under which the evidence of some of these statements labour, I am far from saying

that these witnesses invented what they stated. They are simply confounding dates, transferring to a later and impossible period what, making allowance for a little exaggeration, I dare say took place in 1849, and could only have taken place at that time. We know from a letter of Lady Doughty's, which has been read, that the two cousins did not meet in the vacation of 1848. Miss Doughty did not leave the Taunton Convent till June, 1849. She records in her diary that she had not met her cousin for several years till she went over to Bath for a few days early in 1849. But he was at Tichborne in that year till the 9th of August, and again from the 15th to the 22nd of October. He was there in the winter of the same year, and again in the winter of 1851-52, and from the 19th to the 22nd of June in the latter year. When, therefore, witnesses speak of having seen the cousins about together at Tichborne in the summer or autumn of the later years, they are probably only confusing dates. I must say I cannot help thinking there must have been a greater degree of familiarity than Lady Radcliffe at this moment remembers. Very likely in 1849, when she first came back from the convent school, they went walking about together. What more natural? First cousins, living in the same house, with a fine park round them, and the clear stream of the Itchen flowing through it; the village beyond the park; the mill beyond that; a variety of pleasant walks; and that these two young people staying in the house together should walk out together, and that there should be little innocent familiarities between them is what I should imagine—the young lady being barely fifteen years of age—the most rigid stickler for propriety would not object to. I only regret Lady Radcliffe did not say at once they had been out walking and riding together. Probably her mind was more fixed on the later period when she had grown older, and when very likely she would not have gone out without the attendance of a servant or a friend. But what does it all come to? Take it at its highest possible value, what does this evidence lead you to believe? Does it lead you to think that there was any manifestation of forwardness or impropriety on the part of Miss Doughty that would render the accomplishment of her seduction by the man who was courting her for the purpose of marriage the easier? or of familiarity which would render it likely that the man would attempt it? Not one of these witnesses speaks to the slightest impropriety. We have the distinct statement under Roger Tichborne's own hand, that it was not till his visit in January, 1852, that he really became aware that his cousin loved him. Can we then believe in any undue degree of familiarity and intimacy at an earlier period.

Gentlemen, there was one piece of evidence attempted, which, I must say, struck me very forcibly as being almost appalling. Father Lefevre, the priest who had been the confessor of Roger Tich-



borne during the whole of his Parisian life was called here before you, and amongst other things he was asked the question whether Roger Tichborne had not confided to him—not in confession, but in confidence as a friend—the fact that he had recorded a vow to build a church in honour of the Virgin, if through her mediation his marriage with his cousin should eventually take place. The defendant had in the clearest and most explicit way declared that he knew nothing of this priest, even by name. He had stated positively that he had never in his life confessed to him. He had given the name of another priest as his confessor, ignoring entirely the name and existence of Father Lefevre, and denying in positive terms that he had ever confessed to him—and I cannot suppose, therefore, that he can have suggested the question I am about to refer to, or have stated to his learned counsel the fact involved in it—yet his learned counsel deliberately put to that priest this question: “In his last confession, did he not”—that is his client, who, according to his own account, never confessed to the witness in his life—“did he not confess to you that he had had connection with his cousin?” I must say I agree with Mr. Hawkins that that was a most insidious question. The learned counsel, I cannot but think, was grievously disappointed at the answer. He speculated on the probability of the witness feeling indignant at the question, and replying that he refused to disclose what had passed in the confessional; in which case the learned counsel might have argued, “that if this did not pass, the witness might have said, in answer to the question, that it did not, because, although it is true that the priest cannot reveal what has been stated in confession, there is nothing to prevent his saying that such and such a thing was not so stated; and the fact of his not denying it, but referring to the privilege of the priest not to disclose the secrets revealed to him in the confessional, instead of saying that it had not been disclosed to him, was proof that it was disclosed, and that he could not deny the fact.” I have not the slightest doubt that was the object with which the question was put. I should be very sorry to do anybody an injustice, but I cannot see, in any way I look at it, any other purpose for which that question can have been put; because the learned counsel was as well aware as anybody that a priest will not disclose anything that has been said in the confessional. Father Lefevre saw the snare, the deliberate snare that was laid for him, and he had sufficient judgment to avoid it. His answer was, “Your question is an infamous one. You know that it is one which no man ought to put to a priest, because everybody knows that the priest would die rather than disobey the ordinances of his church, and violate what he believes to be a sacred duty in respect of matters spoken to in confession. But I can answer your question. I cannot tell you, because it would be

contrary to my sacred duty, what is revealed in confession, but I can tell you what is not, and I can therefore answer you emphatically that Roger Tichborne did not tell me, when he confessed to me, that he seduced his cousin. It was never said." So that that attempt failed ; it was one the like of which I hope I shall not again see.

As elements in considering the question of seduction, the moral character of Roger Tichborne and the nature of his love for Miss Doughty have been introduced by the learned counsel for the defendant. According to him, Roger Tichborne was a monster of profligacy, and his feeling towards his cousin was nothing more than the lowest sensual desire. Can either of these positions be accepted as true? That Roger Tichborne was not a model of immaculate purity I readily assume. I dare say he was very much like many other young men. I dare say he read 'Paul de Kock' when he might have been reading something more edifying but less amusing ; and I think it was a mistake to hold him up as a paragon of virtue. But certainly in some respects his conduct and habits—at all events after his love for his cousin had become a settled thing—contrast favourably with those of some of his brother officers. He not only would have nothing to say to the women who occasionally frequented the barracks, but resented all attempts to force them upon him, which we know was one of the practical jokes more than once played upon him, till at last Major Forster, as he himself told us, became satisfied that the repugnance of Roger to this sort of society rested on motives which commanded respect, after which no further attempt of this kind was made to annoy him.

As regards the assertion that Roger's love for his cousin was a mere animal passion, I can only say that, from the beginning to the end of this cause, there is not, so far as I am aware, a single particle of evidence that bears it out. Nor has the learned counsel in any way attempted to make good his assertion by proof. Roger Tichborne's correspondence, in which his cousin is so often referred to—the papers in which he portrays his inmost thoughts—are before you. Judge whether his love was the mere sensual lust the learned counsel has represented it, or the respectful and honourable feeling which a man entertains towards a woman whom he desires to marry. That his fondest desire was to make Katherine Doughty his wife, we know from the paper of the 22nd of June, in which he invokes the intercession of the Virgin with God to bring about that result. Roger Tichborne may not have been a model of moral perfection, but does what we have learned of his character warrant us in believing that he was capable of sacrificing to a gross passion the honour of the woman whom he desired and hoped to make his wife?

And here another argument, by which the learned counsel for the defendant sought to uphold this extreme view, may be appropriately

noticed, and I think, in justice also to Lady Doughty, ought not to be passed by. He contended that the estrangement of Lady Doughty and Sir Edward from their nephew, and their objection to his coming to Tichborne after June, 1852, arose from their having become aware that he had been guilty of some impropriety towards their daughter, or from their having conceived a suspicion of dishonourable designs on his part, from which an inference might be drawn of the probability of what the defendant has asserted having in fact taken place. Against this there is the fact that, while Lady Doughty is firm in her resolve that all idea of an engagement shall be renounced, and the intimacy shall not be renewed, she again and again assures Roger of her unabated and unalterable affection, which she could not have done if she had believed that Roger had contemplated, much more that he had accomplished, the dishonour of her daughter. Yes; but, says the learned counsel, this was all hypocrisy on her part. She did not wish to break with Roger entirely, but she took care that he should not again come near her daughter. I cannot help thinking that the imputation of such mean and pitiful hypocrisy is a very serious reflection on the memory of Lady Doughty, who, unfortunately, is no longer here to repel this imputation and protect herself against it. There is something shocking in the idea of an English lady thus addressing the language of motherly affection to a man whom she must have loathed in her heart, as having been willing, being her own kinsman, to abuse her hospitality and confidence to effect the ruin of her child and his own cousin. I have read to you the correspondence between her and Roger; you are aware of all the facts. Is there, in your opinion, anything to justify such a charge? It is clear that if Lady Doughty entertained any such idea, Sir Edward did not, for if he had, he could not, as a father and a man of honour, have sent his dying blessing to a man he believed to be a scoundrel, in the terms of tender affection which I read to you this morning—unless, indeed, we are to give Lady Doughty credit for barefaced falsehood as well as hypocrisy, and suppose that she invented the message conveyed by her to Roger Tichborne as from his uncle, who then believed himself to be on the point of death. Gentlemen, if you should think that the suggestion of the learned counsel is devoid of foundation, we have here again another of those groundless imputations which have so painfully characterised this cause.

Gentlemen, the statement of the defendant, the denial of Lady Radcliffe, and the evidence bearing upon the question, are before you. You must judge for yourselves whether you think it is a probable story or not. A woman is at the mercy of a man who chooses to say he has triumphed over her, and we are bound in justice to her



not to accept the story unless we are satisfied it is proved. We owe, no doubt, an equal duty to the man not to allow her denial at once to convince us that his statement has been false, but we are bound to look more closely into the circumstances of that statement, and to see whether in the details which he gives—binding him as nearly as we possibly can to time and place—we find that consistency and that degree of probability which would justify us in accepting it as true. For it is not enough to say that a thing is possible, if the circumstances under which it is represented as having happened are impossible or unworthy of credit, as you may perhaps think this statement of the seduction at the mill or in the grotto to be.

But the seduction forms only a part of the story; the meeting at Tichborne—the meeting which he represents as taking place between Miss Doughty and himself, on an occasion when he was returning from hunting—is, of course, equally important. And here, again, we must refer to dates. When did that meeting take place? The defendant has given three different dates. He first said October or November; then he said November or December; and lastly, November is fixed by the written statement produced on the trial, in which “Cheriton, November, 52,” is repeated twice over. I have said little about September, that month not having been referred to by the defendant at all. But as to September, perhaps it would be as well to observe, in passing, that throughout the whole of that month Roger is still writing from Canterbury, and could not have been at Tichborne. The defendant does not allege that the seduction took place in the month of September, nor could it have done so, Roger Tichborne having been all that month at Canterbury. Then as regards the month of October, it is quite clear that he was throughout that month at Canterbury. I have the letters of October here, and when the dates are referred to, you will find the correspondence is kept up throughout the month of October just as it was in the three preceding months. There are letters of the 3rd, 4th, and 10th, the 15th, 17th, 23rd, 25th, up to the 28th, running through the whole of the month, always from Canterbury. He could not have left his quarters unless he got leave, and there is no trace of his ever having done so. The letters in October, to which I have been referring, will, I have no doubt, have remained impressed on your memory from the circumstance that it was throughout that month that there was the correspondence with Mr. Gosford about taking a hunting-box for him in Hampshire, and the strenuous opposition of Lady Doughty to his coming into Hampshire at all, and his attempting to reconcile her to it by saying he did not mean to come within a certain distance. The correspondence ends in her offering

him Upton, and his going to Upton on the 28th. It is impossible to suppose that while Lady Doughty was resisting the idea of his coming into Hampshire, or even within a distance of fifteen or twenty miles, she should have tolerated his presence at Tichborne—especially as her objection to his coming into the neighbourhood was the resolution not to invite him to Tichborne, and the talk that might ensue in consequence of his not being allowed to come there. Nor is it likely that while a correspondence was going on relative to his coming into the county he would have been staying, as he says, at Winchester, within six miles of Tichborne, and hunting in the immediate neighbourhood of the latter place. But it may be said that when he had got to Upton he would be within fifty or sixty miles of Tichborne, and within reach by the railway; and that, having come over from Upton to hunt, he may, when out hunting, have had a meeting with his cousin. With reference to this let me ask you to attend to the letters and facts I am about to bring under your notice. -

On the 28th of October we find him fixing himself at Upton. Having got to Upton on the 28th of October, let us next see whether he left it again, and if so, what became of him.

On going to Upton, Roger Tichborne took his horses with him with the intention of hunting. He writes to Mr. Gosford to request that he will have the stables at Upton got ready, as he is going to send his horses there; and no doubt he did send his horses to Upton. Now, a man cannot hunt in Hampshire, or anywhere else, without a horse, and until you find him sending a horse or horses into Hampshire, the possibility of his being out hunting there is out of the question. Having gone to Upton on the 28th of October, on the 5th of November he leaves it for Paris. In a letter to Lady Doughty of the 5th of November, he writes: "I am going to Southampton to embark to night at 8 o'clock for le Havre, I shall go to Paris to-morrow, where I shall remain a week." On the 14th of November he writes from Upton: "I arrived here yesterday after a very fine journey from Paris; I was quite surprised to find Paris so full and so gay at this time of the year." Therefore, from the 5th to the 13th he had been away at Paris, and could not have been in Hampshire. On the 22nd he writes two letters to Mr. Gosford, from which I think you will be quite satisfied that up to that date he never had hunted there from the time he went to Upton, because, as I just now said, he could not hunt without a horse, and he certainly had no horse in Hampshire, as you will see. On the 22nd he writes this letter: "My dear Sir, I shall be on Tuesday morning at 11 o'clock at the *fox hounds meet at Four Lanes, Beauworth*. Come and see the meet there if you have time, and tell me the news. Yours truly, R. C. TICHBORNE." Having posted that letter, he appears to

have looked into ‘Bradshaw,’ or one of the books of that sort, and he finds that to send his horse to Winchester and bring it back, and stay a night at Winchester, would cost him £5; and he does not think a day’s hunting is worth the money; so he writes on the same day, November 22nd, in these words: “My dear Sir, I see by looking at the book that it would be too expensive for me to have a day’s hunting with the H. H. to-morrow, as the expense altogether would come to £5. I believe that it would be too much of a good thing.” Now, from that it is plain he had never sent a horse over to Winchester to hunt with these hounds before. The fact of his not knowing what the expense was, and his looking into ‘Bradshaw,’ and being deterred, when he finds what the expense will be, from sending his horse to hunt with the H. H., is proof to demonstration that he had never done so before; if he had, he would have known what the expense was; and the next passage of the same letter shows very plainly he had not been keeping any horses in Hampshire. “I have been thinking that I might perhaps keep two, if not more horses at Winchester”—he seems to have forgotten his aunt’s objection to his coming into the neighbourhood—“As I am obliged to keep them somewhere, it won’t be more expensive for me to keep them there for a fortnight or three weeks than it is here. As to tell me there is fox-hunting in this neighbourhood, it is all nonsense. If I want to hunt I had better hire a balloon and go and hunt birds. I have no doubt that I might succeed as well with one as the other. If you have heard of any stables let me know how much it is the week. Pray excuse this hurried note.” In effect he says, it is no use keeping horses here, the hounds are too distant, I can get no hunting; but it occurs to me I might just as well keep a couple of horses in Hampshire, if I can keep them for the same expense I am put to in keeping them here; therefore I wish you would see if there are any stables to be had where I can keep a couple of horses, and let me know what the expense will be. That is written on the 22nd. Nothing is done on that. Mr. Gosford was very busy at the time, as he had occasion to leave Cheriton, where he lived, to look after the affairs of the estates in Buckinghamshire and Lincolnshire. He leaves on the 26th, and he would not get that letter of the 22nd until the 23rd, and he does nothing in the interval towards getting stables for Roger Tichborne; possibly he had not even time to go to Winchester to make the inquiry. Nor, if he had, is it at all likely that, knowing that Sir Edward and Lady Doughty objected so strongly to Roger coming to hunt in their neighbourhood, he would have lent his assistance to enable him to do so? He left on the 26th, as is shown by a letter from Lady Doughty to Roger Tichborne of the 27th, in which she says, “Mr. Gosford is gone to Buckinghamshire and



Lincolnshire yesterday"—that would be on the 26th—"and will not return till the end of next week." So that Gosford is clearly not there from the 26th until the end of the ensuing week.

Now Roger was determined to have a day's hunting in the old country (he had been used to the Hampshire country) before he finally left. He had occasion, he writes, to go to London, and went up on Sunday, November 28th, and took one of his horses with him as far as Winchester, or else sent him over, and he writes to his aunt on that day in these terms: "As I could not before leaving England resist the wish of seeing the H. H. once more I have send one of my horses to Winchester this afternoon. I shall be I hope at the fox hounds meet at West Tisted on Tuesday morning at a  $\frac{1}{4}$  11 o'clock. I shall go to Paris for three weeks at least in about a week or ten days. I shall ask my Father's leave to go and get my Brother to come and spend a week with me. I should like very much to get him to come and spend a short time with me before I begin my journey. I have not heard from that young Troubadour for nearly three months. He has given up altogether writing to me. I have not been able to go out hunting once ever since I have been here—the hounds never meet nearer than thirty or forty miles. I was very sorry that they met so far off as I should have liked to get a little hunting during the time I am here."

Thus you see on the 28th, Sunday, he writes to his aunt saying, that on that afternoon he has sent a horse over to Winchester, in order that he may hunt on the Tuesday morning at the meet at West Tisted. Now Tuesday morning would be the 30th of November, and it consequently follows from these letters that throughout the month of November, having no horses in Hampshire, he never hunted, or could have hunted there, except on that one day, the 30th of November. The letter which he writes on the 22nd clearly shows that he had not taken a horse into Hampshire before that, and that he had not kept horses at Winchester up to that time. This brings us to the 22nd. Then the letter to the aunt of the 28th shows he had no horse at Winchester, as we find him sending a horse over to Winchester for the purpose of hunting on the ensuing Tuesday. Therefore, it seems proved to demonstration that the 30th of November was the only day up to that time on which Roger Tichborne could hunt, or did hunt, in that neighbourhood. But, then, what he represents to have happened may possibly have happened on that day, the 30th of November, and we have to inquire how far that may have been the case. It may have been that on that 30th of November he did, on his way home from hunting, pass through Tichborne, did meet his cousin in the village, and did have that conversation with her. But that again is made difficult, if we look at the evidence of Mrs. Greenwood. Mrs. Green-

wood recollects the last time she ever saw Roger. He was brought to the house from West Tisted, on that day, after hunting, by her husband, Colonel Greenwood, who was out with the hounds, to get some luncheon before he returned. They came in some time after luncheon time, and it was getting late in the afternoon, but they had some refreshment upon their arrival, and as soon as he had had something to eat and drink he hurried away, because he said he had to catch the train at Winchester on his return to Upton, and it was already late. They made him promise that he would come and spend a few days in the ensuing week at Brookwood before he went away finally. If Mrs. Greenwood is right, he went away in haste to catch the train at Winchester; and, inasmuch as Tichborne would be, we were told, a mile and a half out of his way, and he knew the country well, every inch of the way, he would not be likely, being pressed for time, to go through Tichborne on his way to Winchester; though, to be sure, if he had a previous appointment with his cousin to meet him at the village, he might have said he was in haste, whereas, in point of fact, he wanted to go to see her. But then the defendant does not tell us that there was any previous appointment. He himself only represents the meeting with his cousin as a casual meeting as he was passing through the village on his way home. There is no reason to suppose there was a previous arrangement to meet, and a man who is in a hurry to catch his train is not likely to go out of his way for the mere possibility of finding his cousin walking through the village. So that Mrs. Greenwood's account would render it very improbable that on this one day, the only day on which he could or did hunt in Hampshire, he should have fallen in with Miss Doughty on his way through Tichborne village. However, it is still possible.

But then we must take it in connection with the third part of the story, namely, his seeing Mr. Gosford and giving Mr. Gosford the document containing the sealed packet. Now that certainly could not have taken place on that same day, because, as I have shown you by Lady Doughty's letters, Gosford went away on the 26th and was not to return until the end of the ensuing week, having business to do connected with the estates; and that he did not return sooner is clear from this, that Lady Doughty, writing to Roger on the 4th of December, adds in a postscript, "Mr. Gosford returned yesterday." Her letter is only dated "Saturday," but on turning to the almanac I find that Saturday was the 4th of December. He had gone away on the 26th, and he was not to come back until the end of the next week. The end of the next week would be the Saturday, the day on which she writes this letter, which was of the 4th, and she says Mr. Gosford returned yesterday, which would therefore make it the 3rd of December; and he must have written to Roger Tichborne to announce his

return, because on the 6th Roger writes to him from Upton, and says, "I was very glad to see by your letter which I received this morning that you were back again to Fairy Land"—which, I suppose, has reference to Gosford's own residence. So that Mr. Gosford notified his return to him, and on the 6th of December we find Roger still at Upton. He also writes from Upton on the 6th to Mrs. Greenwood, excusing himself for not coming over to Brookwood as he had promised, on the ground that he has so much to do, as he is going up to London to make preparations for his departure, and also that he intends to go to Paris, and therefore has not time to come over. It is, therefore, very improbable he should have been again hunting in Hampshire, and he could not have done so with decency after writing to Mrs. Greenwood, saying he could not come to Brookwood owing to his being so much pressed for time. Moreover, we find that Lady Doughty, on hearing of his having been hunting in the neighbourhood, writes to expostulate with him for having done so. Under these circumstances he would hardly have gone hunting there again. On the 8th he writes to his brother and says: "I went out hunting yesterday we had a very good day's sport, we had an hour's run without a check. The first half of it was across a grass land and went as fast as our horses could go. Some part of it was so fast that it was all what we could do to keep up with the hounds. The hounds meet again quite close to Upton on Friday." So that it is plain he is speaking of the Dorsetshire hounds and not the Hampshire hounds. He says he is going out again on the Friday. On the 9th he writes to Mr. Slaughter, inviting him to go down to see him. We know Mr. Slaughter did go down to see him, because it was on that occasion that Roger upset him in the dog-cart. Then he writes on the 16th about pursuing the poachers on the island, and gives a rather ludicrous account of his adventures in that matter. On the 17th of December he starts for Paris, and he does not return to Upton. I have here his letter of the 16th; he says, "I am going to embark at Southampton to-morrow for Havre." That would bring us to the 17th. At the end of the month he returns to England, and goes to Canterbury, and writes from Canterbury on the 1st or 2nd of January, saying he had arrived there on the 31st of December.

Gentlemen, under these circumstances, are you satisfied that either in November, or in December, after he had come from Canterbury, and was residing at Upton, Roger Tichborne ever went over to Hampshire and had a day's hunting there, on his return from which he could have seen his cousin, and, in consequence of what she communicated to him, have gone to see Mr. Gosford? There is no trace of it in his letters. It is quite clear he could not have gone immediately to Mr. Gosford on receiving that information from his cousin as Gosford was away; but no doubt he might have gone back



to Upton, and then have gone over to see Mr. Gosford at a subsequent time. Mr. Gosford positively denies that anything of the sort ever took place, and says he never came to him to make any communication about his cousin. There is no trace whatever in the correspondence of his ever having seen Gosford at this period, with one solitary exception, which the learned counsel for the defendant sought to avail himself of. On the 14th of November Roger writes to Mr. Gosford to ask him if he could come over and see him, as he wanted to communicate with him upon some private business:—"I should feel greatly obliged if you had the kindness to let me know by return of post when you intend coming to Upton, as I should wish to have a private conversation with you upon some private business with you as soon as you would find it convenient to come, which I hope will be before long." The learned counsel says that that "private business" had probably relation to the communication he had received from Miss Doughty. But, inasmuch as it is part of his statement that he met Miss Doughty in the village on his return from hunting, and inasmuch as up to that time, as is shown, I think to demonstration, he never went out hunting in Hampshire at all, it is clear that the letter of the 14th, in which he refers to private business, could not have had anything to do with any communication he had received from his cousin, because up to that time it is impossible that any communication should have been made by her to him under the circumstances he has stated. That is how that matter stands.

But let us suppose that time and place do not offer any insuperable difficulties. Let us see what is the substance of his statement. He meets his cousin and she tells him she fears she is with child, and he says to her, I cannot marry you after what my uncle and aunt have said. What had they said? It has never been stated by the defendant that the uncle had said anything offensive; all he said was that he objected to the marriage. It is true the learned counsel for the defendant has suggested that in prohibiting the further prosecution of Roger's courtship of his cousin, Sir Edward Doughty had referred in offensive terms to the illegitimacy of his mother, and to this he ascribed the state of distress in which, as appears from his own statement, Roger was plunged at the time. There is not a tittle of evidence to support such a notion. There is not a trace of it in Roger's papers or letters. Sir Edward Doughty was a gentleman. He was attached to his nephew, and is not likely to have wounded him unnecessarily. I am bound in justice to the defendant to say I do not believe this suggestion can have emanated from him. When pressed as to what had passed between his alleged uncle and himself, he never alluded, however remotely, to anything of the kind. The assertion, so derogatory to the memory of Sir Edward Doughty,

can only have proceeded from the fertile invention of the learned counsel himself. Lady Doughty, it is true, had referred to his habit of drinking. But no one who turns to the correspondence of June and July can fail to see that it was only because this was put forward as a reason for objecting to the marriage that this suggestion was resented by Roger. Did Roger wish for the marriage? I think one cannot doubt that the man who gave to the young lady the document of the 22nd of June was in earnest. Roger Tichborne was a good Catholic; he would not have invoked the aid of the Virgin as a mediator to intercede on his behalf with God that the marriage should take place if he had not desired that that union should take place. But if Roger Tichborne did desire to marry his cousin, what did it signify, under the supposed circumstances, what his uncle and aunt had said? What would the obvious reflection have been? "If you are in that condition, there is an end to all obstacles. Your father and mother will not hesitate for a single instant; they will only desire to hasten the union which we both ardently wish for. Every impediment and every difficulty will at once be swept away, and you and I will be allowed to marry and be happy." The thing is obvious. If she was in the condition she believed or feared herself to be, there would be an end of all difficulty. But, says the defendant, "I did not believe in the reality of her statement; I thought it was only a foolish girl's fears, or that it was said for the purpose of inducing me to marry her." But that presupposes that his marriage with her was dependent entirely on his own will; that he had nothing to do but to say, "Marry me," and everything would be at an end: whereas we know that Roger Tichborne desired the marriage, and it was the father and mother that stood in the way of it. She, too, knew her father and mother would not allow the marriage, and that it could not take place in the Roman Catholic Church without their assent, as without that assent the dispensation would not be granted. Under these circumstances is it likely that she would have pressed him to marry her, as if it only rested with him, or that he should have dealt with her as though his marrying her depended simply on his own will, while he was holding back because the uncle and aunt had said something with which his personal dignity had peradventure been offended?

Incidentally to this part of the inquiry arises another question. In the first form of the document which the defendant alleges he left with Gosford, he says that his father pressed him to marry Miss Doughty. "She pressed me very hard to marry her before I left, and my father tried to persuade me to do the same thing." Now the correspondence distinctly shows that it certainly was not until October that the father could have known anything about it. It is in the letters of October that the question of whether he shall tell his father, in order that the

father may understand why he does not go to Tichborne, is discussed between Roger and Lady Doughty, and before the end of October Lady Doughty says she has taken on herself to write to explain to the father how it was that he no longer came to Tichborne at that time. So far as Sir Edward and Lady Doughty were concerned they had then set their faces against this marriage; and it was not until they had done so that the father was made acquainted with the fact that there had ever been anything like an engagement between his son and Miss Doughty. How then could the father have pressed the son to marry a young girl whom he knew her father and mother would not allow to marry him? The father, as a Roman Catholic, would have known that the necessary dispensation could only be obtained on the consent of the parents. Besides, we are told by Mr. Gosford that Sir James had a strong objection to first cousins marrying, and was with difficulty induced to assent to the marriage of his son Alfred with his cousin Miss Arundell. Is it intended to be suggested that the father knew of the supposed condition of Miss Doughty, and therefore pressed his son to marry her? The defendant has never asserted anything of the sort, and any such idea would be preposterous. And without such knowledge, is it possible the father could have pressed him to do that which, if he had been willing to do it, he would not have been permitted to do? Then he says the Gosfords always pressed him to marry her. Both of them positively deny it. Therefore upon this incidental matter, which is engrafted, as it were, on the main question, the defendant is wholly at issue with the witnesses, and, as it strikes me, with the correspondence and with the facts. The position here assumed by the defendant is obviously a false one, and the misconception arises in this way. He puts the case as though it were that of a man who, having seduced a girl, is pressed by her and by others interested in her behalf to marry her, and who can marry her or not, as he pleases. Here the marrying would not have been at his option. The parties were Catholics. Miss Doughty and Roger Tichborne were first cousins. The dispensation of the church would have been necessary. Miss Doughty was a minor, and the dispensation would not have been granted without the consent of parents. No doubt if the fears which she is represented to have entertained had proved real, the consent would have been readily enough given; but then that implies that she must have confessed to her parents the fact of her seduction before she knew for certain that her fears were well founded. Is it likely that she would have done so? When under these circumstances she is represented by the defendant as pressing—backed by his father and the Gosfords—for an immediate marriage, can this part of his statement be true?

Going a step farther we are met by the extraordinary fact of his



never having in any way communicated with her on the subject. He makes no further inquiry as to the reality of what she feared. He never writes to her, or holds any communication with her; never even tells her to write to him, though nothing would have been more easy than for her to do so. Is this at all probable? These things have to be seriously considered, because when you have two persons in direct conflict, the one swearing in the affirmative and the other in the negative as to facts, before you decide between them it is necessary carefully to balance all the probabilities arising from the surrounding circumstances to see on which side the truth may fairly be deemed to lie. Looking to the circumstances, we have to ask ourselves whether it is likely that a man who had taken advantage of a young girl so nearly related to him, and who knew what the consequences might be to her and to himself—fatally disastrous to her, and to a certain extent, though not to so great an extent, disastrous to him—because he would be turned out of the society of every member of the family for having brought shame and dishonour upon it—would be supremely indifferent whether the fact of which his victim was apprehensive was a reality or not? These things seem to me to be things which must be seriously taken into consideration before you decide the question, Which is speaking the truth? the defendant or this lady? Did he seduce her? Did he have this meeting with her? Did these things pass which he has told us?

So much for the question of seduction, and of the alleged meeting between the defendant and Miss Doughty. I now come to the third head, the remaining one, which is that of the sealed packet.

As regards the sealed packet itself, I have to call your attention to the fact that there are three distinct statements made by the defendant on the subject of the contents of this sealed packet. The first is the one drawn up on the 2nd of August, 1867, and given to his counsel. The next is the one contained in his affidavit of February, 1868, and the last is the one drawn up the night before his cross-examination on the subject, in the presence of Mr. Spofforth, in which I cannot but think I trace Mr. Spofforth's style rather than the defendant's; the last being the one which he proposed to hand to the learned counsel who was cross-examining him before the judge and jury as the one by which he desired to abide.

Now, it is impossible not to be struck by the inconsistency which exists between these documents. I have pointed out one between the affidavit and the other statements. If you put the same construction on it which I own I am disposed to put, that it implies that he gave the document into the hands of Mr. Gosford without having first communicated the contents, to be opened by him only under a given state of circumstances, so that he should then first become acquainted

with the contents, that certainly would be very inconsistent with his statement upon oath given on the trial, when he says that he went to Mr. Gosford's, and in his parlour at Cheriton drew up the document, read it over to him, and then sealed it, and deposited it with him.

Next as to the two papers in which he purports to give the contents of the document. I have already read them to you, but their importance is such that I must trouble you with them again. The first, that of the 2nd of August, is as follows:—"In the event of my father having possession before my return, and also dieing before my return, Mr. Gosford was to act for me, and according to instructions contained in document. In the first place he was to have Upton to live at, and was to manage the whole estate. He was to keep the Home farm in hand, he was to show great kindness to my cousin Kate and let her have anythink she requires my cousin give me to understand that she was *enciente* and press me very hard to marry her before I left. I did not believe such was the case, nor have I since heard it was so. Gosford was also to make arrangements for Kate to leave England if such was true. Both Gosford and wife pressed me very hard to marry at once—to this my father tried to persuade me." Here you will observe in the first place that it is there distinctly stated that Gosford, who was to manage the whole of the estate, was to have Upton to live at. Next you see that the whole thing is made contingent, so far as Gosford's going to live at Upton is concerned, upon his father having possession before his return and dying, so that at that time the defendant seems to have had in his mind what certainly is the true view of it, that so long as his father lived he would have no power whatever over Upton. He could not dispose of Upton, and therefore all he desires Gosford to do, in the event of his cousin proving with child, is, that he shall show her great kindness, shall let her have anything she requires, and make arrangements for her to leave England if her fears should prove true. Just observe the position in which this poor girl would be placed if, after he was gone away, her fears should prove true, and she should find she was with child. Mr. Gosford, in the state of circumstances anticipated there, would have no place to put her in, or to send her to, neither would he have any funds out of which to make the slightest provision for her. It was only on the father's death and Roger's own death, and Gosford so coming into possession of the estates as the trustee under Roger Tichborne's will, that it would be in his power to do for her what these instructions contemplate. He had no means whatever, no funds, no power of doing anything for this unfortunate young lady if she was in that position. I am, therefore, at a loss to understand what the defendant can mean by saying that he left the document sealed up in the hands of Gosford, in order that Gosford, if she proved with child, should take the necessary steps for sending her out of England,

and doing for her what she would require, seeing that he would have no funds, and no means of sending her away. Even if Gosford had had the means of sending her away, what a position for this young lady to be put in. Taken away from her home by the steward, Mr. Gosford, sent to Scotland or elsewhere, alone, unbefriended, and to take her chance. You must ask yourselves whether, from what you know of Roger Tichborne's relations with his cousin, you can believe that under such circumstances, if he had meant to provide for her, he would have left her with no other than so idle and illusory a provision.

I pass on to the second paper. When the defendant, at the suggestion of his attorney, had to prepare a statement, which he proposed to hand up to the judge and jury, so as to avoid, if possible, making an open statement in a public court, which might excite a strong feeling against him, and he drew up the last paper, he draws it up in a different form. "Cherifon November 52." I have shown you that this date is inadmissible; the thing could not possibly have happened at the time. "If it be true that my cousin Kate should prove to be *enciente* you are to make the necessary arrangements for her going to Scotland. And you are to see that Upton is properly prepared for her to live in until I return, or she marries. You are to show great kindness to her and let her have everything she requires. If she remains single until I come back I will marry her." It never seems to have occurred to his mind that if she had the misfortune to have a child it might stand seriously in the way of a matrimonial union. That does not seem to have struck him. "In the event of my uncle's and father's death you are to take full charge of all the estates on my behalf. To keep the home Farm and to repair the cottages at pryors Dean."

Here, you see, he is disposing of Upton in his father's lifetime. He does not wait for his father's death, but he says, "If it be true that my cousin Kate should prove to be *enciente* you are to make the necessary arrangements for her going to Scotland. And you are to see that Upton is properly prepared for her to live in until I return or she marries." So far, therefore, the inconsistency of the former document is remedied. The provision for the unfortunate cousin is not made to depend altogether on the uncle and father dying before her delivery. Upton is to be prepared for her at once. But this only involves a still more glaring inconsistency. So long as his uncle or father lived, Roger Tichborne had no more power to direct Gosford to prepare Upton for his cousin Kate and allow her to reside there until he returned or she married, than you or I have. The thing was impossible. Sir Edward Doughty was not dead; he did not die till the ensuing March—and Roger could not tell whether his uncle might not last long beyond that—he was in a precarious state of



health, but there was no telling how long he might last. And then there was his father, who was in perfect health. There were two lives between him and the succession. Yes, but, says his counsel, Roger had a mistaken notion about his power of leaving Upton, and he had a fancy that Upton was his, and he could deal with it as he pleased. I venture to say Roger Tichborne had no such notion. If he—according to an unguarded and rash admission of Mr. Gosford—entertained any such notion at an earlier period, that idea must have been long since exploded. He knew perfectly that Sir Edward and Lady Doughty treated Upton as their own, and kept up an establishment there. He knew they let the place to the Dormers. They were there in the winter of 1850-1, and in the summer of 1851, when he visited them there. They tried to let it several times, and it was because they could not let it that they wanted the general consent of the parties interested to sell it. They offered to lend it to Roger Tichborne in the month of October, 1852, and the offer was thankfully accepted. One cannot suppose that the same man who accepted it from them as a loan could have imagined that he had the power of disposing of it, or doing what he pleased with it. What really does appear to have happened is this: the man of 1871 confounded his own position at that time, or the position in which Roger Tichborne would have been at that time, with the position in which Roger Tichborne was in 1852. He placed the Roger Tichborne of 1852 in the position Roger would have been in in 1871; and because Roger Tichborne in 1871 would have had the absolute power of disposing of Upton, he transfers that to the Roger of 1852, and assumes that the Roger of 1852 would have done the same thing. The Roger of 1852 would have known better. He would have known he could not dispose of Upton, where his uncle had an establishment, and where, when the father succeeded the uncle, the father would have the same right over it before it could possibly have come to him.

But putting this inconsistency on one side, just see what is involved in this statement. Here is a man who, having seduced another man's daughter, and being apprehensive of the consequences of their intimacy, and contemplating the possibility of the daughter being with child, and that it would be desirable that she should have a place of refuge from her father's wrath, proposes to take the father's house, without his consent, to put the daughter in. That is really the simple result. It is the logical, inevitable result of the statement contained in this paper. Besides which, even if you could suppose Roger Tichborne to be so ignorant of the true state of things with reference to this property as to imagine he could dispose of Upton, to a trust of this kind thus committed to Gosford, there must be two parties. There is the party who confers the trust, and the party who accepts it. If Roger Tichborne could have been such an idiot as to suppose he could

dispose of Upton at this time, Mr. Gosford was not such a fool as to be party to such a delusion ; indeed, in his evidence he repudiated the thing at once. He said, “ How could I be such an idiot as to suppose I could take away my employer’s daughter, and use my employer’s house for the purpose of putting her into it ? ” Gosford would have known better, and would have said, “ You are talking nonsense ; I cannot take possession of your uncle’s house ; I cannot take away my master’s daughter.” Just consider for a moment the position in which the acceptance of such a trust would have placed him. Whether you look at the one document or the other, whether you consider it was to be at Upton that this poor girl, if her condition was what she feared, was to find a place of refuge, or whether it was to be in Scotland, or some remote part to which she was to take flight—whichever it was to be, can you conceive the possibility of the steward of Sir Edward Doughty taking away Sir Edward Doughty’s daughter—of the father’s steward taking upon himself the office of conveying away his master’s daughter from his master’s house—taking her away, Heaven knows where, to hide her shame ? Would any steward in the world take on himself such an office, especially a man of intelligence such as Mr. Gosford undoubtedly is ? These are things one must contemplate and duly weigh before we can adopt a story which is based on such a foundation. If you look at the former document, the matter is worse still. There there is no Upton for Miss Doughty to take refuge in, she is simply to leave England. With whom ? Is Gosford to go with her ? Is he to abandon his stewardship ? Is she to go under his protection ? If not, with whom ? Where is she to find an asylum ? Where is she to find a home ? And again, and above all, where were the funds to come from, Gosford not having a shilling available for the purpose ?

And here another consideration forces itself on my mind. The document is here said to have been written and given to Gosford in the month of November. But Roger Tichborne was not at that time contemplating an immediate departure from this country ; nor was it immediately prior to his departure, as the defendant at first stated in his affidavit. If it could have been put on that footing, there might seem to be some sense in it. Suppose a man is under the immediate necessity of taking a journey to a distant country and cannot help himself, and he finds he has got a poor girl into trouble, or there is a possibility of it, and he is uncertain about it, he might say, “ I cannot stay to protect you now, I am obliged to go ; I will do the best I can for you ; I have a friend in whom I can place perfect confidence ; I am about to start, I cannot wait to know whether your fears are well founded or not, but I will do the best I can ; I will place you in the hands of this confidential friend ; I will ask him to find you a place of refuge, and to do everything that can be done to mitigate the

circumstances in which you are placed." So that the statement in his affidavit that it was "just previous to his leaving England in March, 1853," would have had some semblance and show of reason in it. But then, of course, on consideration, that statement would not do. If it was clear that Roger Tichborne never was at Tichborne House, and never had any opportunity of having the illicit intercourse with his cousin out of which her pregnancy could have arisen, since the month of June or July, in the ensuing February or March there would have been no question at all about it; the uncertainty would have been converted into positive certainty one way or the other. Therefore that date would not do; but if we go back to November, and take that as the date, then one asks oneself, inasmuch as Roger Tichborne did not contemplate leaving England for many months, did not even send in his papers to retire from the army until the ensuing January—inasmuch as he was staying in England during the winter and not leaving till the spring—where was the necessity of betraying his intercourse with his cousin, and the fact of having seduced her, even to his confidential friend Gosford, until her fears proved to be either well founded or to be the mere fears of a poor frightened girl? That is a thing I find very considerable difficulty in reconciling my mind to. Why, if he did not intend to leave England until the ensuing March, by which time the thing would be certain one way or the other, why communicate to Gosford, the steward and servant of her father, the fact that he had had this intercourse with his cousin and seduced her? There could be no necessity for it, and no advantage arising from it. Time enough to confide to your friend that you had brought shame and disaster on the girl you loved, when the necessity for it arose from the certainty of the fact. Why should it be done an hour sooner than was absolutely and unavoidably necessary? Therefore, it strikes one, if such a communication had been made by the cousin in the month of November, it was in the highest degree unlikely that Roger Tichborne would have hastened to impart this perilous secret to Mr. Gosford, there being at that time not the slightest necessity for doing so. All he had to do was to say to his cousin, I hope it is not as you apprehend, but keep me well informed, let me know how the matter stands, you can always communicate with me, and I can then do the best to protect you, and do the best I can to make things right. That, it strikes me, would be the course that any man of sense and feeling would have pursued under the circumstances, and the statement of the defendant that he adopted the opposite course is not calculated to increase our confidence in his story.

Now, then, taking the whole thing into consideration, looking at it as one whole from the beginning to the end, do you believe in the seduction? Do you believe in the alleged meeting, and in any com-



munication having been made by Miss Doughty to Roger Tichborne of the fact of her being, or of her fearing that she was, with child? Do you believe in the conversation which the defendant has repeated, that he told her he could not marry her then, on account of what his uncle and aunt had said, but would marry her if she remained single until he came back? Cold comfort, as I have said, if she really was in that state which she feared she was in. Do you believe he went to Gosford, and there drew up anything in the nature of the instructions that he has in two separate papers, irreconcilable with one another, represented? I say irreconcilable, because, although the learned counsel for the defendant said they must be read together—a proposition in which I entirely agree in this sense, namely, that they must be read side by side—I do not agree in the position that you must consider the statement in the one as governed, or controlled, or modified by the statement in the other. I cannot admit that, because when I find that these papers are directly and diametrically contrary to and opposed to one another—that in one of them Gosford is to live at Upton, and in the other that his cousin is to have it; that in the one the thing is made contingent on the death of the uncle and father, and in the other it is not, it is plain to me that any attempt to reconcile them would be illogical and absurd. Moreover, when I am told that he made these arrangements for the benefit of the cousin, to be contingent on the death of the uncle and the father—and recollect that the uncle, though in his last illness, was still living, and that the father was in good health and lived for many years afterwards—I ask whether any man with a heart in his body would, on such a foundation as that, with no better prospect or preparation for the protection of the woman whose happiness and honour had been sacrificed, have left and abandoned her without further concern or regard, and have gone to roam in foreign lands, in pursuit of health and pleasure and enjoyment, while he left her behind to dishonour and ruin? For, that is the state of things these statements involve; and I cannot but ask myself what there is in the history or antecedents of Roger Tichborne, or in what we know of his relations with his cousin, which will warrant us in believing he did seduce his cousin, or that if such a thing had happened, he would have thus basely abandoned her. She has sworn solemnly to the contrary. I do not say her oath is to be taken as binding and conclusive upon us. But what I do say is, that her honour, her peace, her happiness being at stake, without allowing that consideration to sway your minds unduly, you are bound to look most strictly, and with the utmost vigilance and care, into all the details of this story, and not to adopt it, unless in your consciences and hearts you believe it to be true.

Gentlemen, the evidence of Mr. Gosford and his statement as to the circumstances under which the paper left behind with him was

committed to his care are no doubt fresh in your recollection. According to his account, the paper was left with him at the time when Roger Tichborne had become aware that his cousin returned his affection, and was very full of hope so far as that was concerned, but was quite alive to all the difficulties and obstacles which might stand in the way of their future union. Then it was that he delivered to Mr. Gosford the document which Mr. Gosford has spoken of. Of that there cannot be the shadow of a doubt, because in the letter I read to you, he refers to it as a document containing his wishes and intentions, to be carried out in his lifetime if he lived ; and in another contemporaneous document he refers to those wishes and intentions as being connected with the building of a church. We may therefore take it as a certain fact that Roger Tichborne did leave with Mr. Gosford a paper recording his intention to build a church. Mr. Gosford says he put that document away and thought no more of it for a time. When he knew that the ‘Bella’ had gone down, and that there was every reason to believe that Roger Tichborne had perished in it, he did not at once destroy the document, and perhaps would not have destroyed it to this day if he had not left Tichborne to go to reside in Wales. But breaking up his establishment at Tichborne, he did what many of us do more than once in the course of our lives, he looked over old papers to see what should be kept and what destroyed, in order not to take with him a mass of papers that had ceased to have any interest, or to be of any value. Amongst other things he found a bundle of old letters and papers of Roger Tichborne’s that had been sent down in a box or boxes from Thompson’s, in St. James’s Place, where Roger used to lodge. He looked them over, found they were not worth keeping, and he burnt them. Besides these, amongst other papers of his own, this document turned up. He debated with himself, and afterwards with his wife, whether he should keep it or destroy it. He thought on the whole it should be destroyed. It had ceased to have any value of any sort or kind. Lady Radcliffe, as he tells us, was the happy wife of another man, and a happy mother ; and this document, if preserved, might fall into the hands of executors, of strangers, who might make a gossip over it, about Roger Tichborne having made a vow to build a church to the Virgin, which, in the eyes of most people, would be looked upon as a foolish thing. Under these circumstances he thought the best thing to do was to destroy it. I think it was the right view of the matter. The paper could no longer be of interest to any one. The defendant was certainly reduced upon the cross-examination to the necessity of admitting that he had left but one packet with Mr. Gosford. He denied, upon the question being put to him on re-examination, that the packet left by him had reference to the building of a church. Mr. Gosford, on the other hand, swears that the only

document left with him by Roger Tichborne had reference to the building of a church in the event of his marrying his cousin. Which is true?—that that packet was a document containing the matter which the defendant has represented? or that, as Gosford says, it was a document having simply relation to a vow to build a church? The best solution of that, as it strikes me, is to be found in the contemporaneous statements of Roger Tichborne—in his letter to Mr. Slaughter, in which he says that, having arranged everything about his will, what he desires to have done in his lifetime irrespective of his will he has confided to Gosford; and in the contemporaneous letter to Gosford, in which he says, “What I have said about the building of the church I will only carry out under the circumstances which I have stated.” If there was but one document, which was the true one? Is it the document to which these two letters to Mr. Gosford and Mr. Slaughter, written in January, 1852, refer, and which corresponds with the one which Lady Radcliffe produces, in the undoubted handwriting of Roger Tichborne? or is it such a document as that which the defendant represents it to have been? It is for you to decide, and the question is ripe for your decision.

And yet, gentlemen, before I finally quit this subject I cannot but ask this question, which, when this subject has been under discussion, has more than once presented itself to my mind. If the statement made by the defendant be true, that he seduced his cousin, and that in consequence of her representation to him he drew up this document and left it with Gosford, how is it that that was not put forward until after the interview at the Grosvenor Hotel? When he sees Mr. Gosford at Gravesend, think what cogency and power it would have had in reducing Gosford at once to the necessity of admitting that he was Roger Tichborne, if he had said, “Why, Mr. Gosford, you are putting a pack of trifling things to me. Do you remember the sealed packet, the paper I wrote in your parlour at Cheriton, which I read over to you, and after I had read it over to you, I sealed up and delivered to you? Do you remember the contents of that packet? If you do not, I do. It contained a provision for the possible contingency of my cousin, Kate Doughty, proving with child. Nobody knew that but you and I. I presume you have not revealed it, and I never have to living man. When I remind you of it can you refuse to believe that I am Roger Tichborne?” Lady Radcliffe went down with her husband to see the defendant at Croydon, in the month of March, 1867, and the first question she put to him was, “Where did we two last meet?” In the first place, is it likely that, if the last meeting had been such as the defendant represents, she would have dared to put that question? But I pass that by. Suppose the question put, what would have been the answer? In an infinitesimally short space of time he could have brought convic-



tion to her mind if he had simply answered, " At the mill at Sevington." Or what if he had said, " When I was at Tichborne, and we took that walk, that I dare say you remember, to the grotto?" It would have imparted nothing to those who were present, because there would have been nothing in it incompatible with the most perfect innocence. But what conviction would it not have brought to the mind of Mrs. Radcliffe that she was speaking with the cousin with whom that intimacy had taken place! It would have conveyed nothing to the husband, and it would have been the simplest way in which to convince her that he was Roger Tichborne. Or suppose he had not given that answer, but had said, " Why, when I was returning from hunting, and I met you in the village, when I got off my horse and walked with you." There would have been nothing in that to carry a shade of suspicion to anybody's mind. He might have said that in the presence of the husband without compromising her, instead of using the expression he says he did, " that what had passed between her and him was sacred, and should never be made known to the husband." If he had said, " When I was coming from hunting and met you at Tichborne, and walked with you," if what he now represents was true, it would have brought the whole state of circumstances vividly to her mind. She would have drooped her head and said, " In truth you are my cousin, Roger Tichborne." No such suggestion was made. Upon those two occasions, when circumstances called for and would have thoroughly justified, on the first his referring Mr. Gosford to that document and its contents, on the second a covered reference to his former intimacy with his cousin, the defendant is silent. It is not until Mr. Gosford has incautiously referred to the fact of a paper, having relation to Miss Doughty, having been left with him, and then has been compelled on cross-examination to admit that the paper is no longer in existence, that the defendant refers to the sealed packet, or declares its contents, connecting them with the seduction of his cousin.

Gentlemen, take all these circumstances into account, and then judge between these parties. Did Lady Radcliffe fall by the act of her cousin? or is that statement a foul, wicked, detestable, abominable slander, resorted to, as if untrue it can in all probability alone have been resorted to, for the purpose of carrying out a great and an iniquitous fraud? Judge between these parties, and as you take the one view or the other, so you will find your verdict on this, not the main issue, but certainly one of the most important issues in this cause.

I say " one of the most important issues in this cause," because, irrespective of its own inherent importance as one of the issues upon which perjury is assigned, the relations of Roger with his cousin, Miss Doughty, and the matter of the sealed packet, are of essential

importance in the vital question we have had under consideration, namely, whether the defendant has exhibited knowledge or want of knowledge of the leading events of Roger Tichborne's life. For there could have been nothing, I should think, that could have left a deeper or more lasting impression on the memory of Roger Tichborne than his relations with Katherine Doughty.

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## ONE HUNDRED AND EIGHTY-SEVENTH DAY.

*Friday, February 27, 1874.*

THE LORD CHIEF JUSTICE: Gentlemen of the jury, we concluded yesterday that part of the inquiry which relates to the identity of mind between the defendant and Roger Tichborne. I must now take you back for a time to the proof—affirmative or negative—of identity to be derived from outward appearance. Here, so far at least as general appearance is concerned, we find ourselves involved in all the difficulty which attaches to the nature of the subject, from the fact that the standard of comparison is to be found in the uncertain memory of the witnesses, and their recollection of Roger Tichborne, which after so many years may be more or less imperfect, and may be materially affected by the disposition of their minds to believe or disbelieve in the existence of identity. It would be a hopeless task to attempt to reconcile the conflicting evidence of a multitude of witnesses, of whom some deny the existence of any resemblance whatever, others though admitting it in a certain degree, yet deny its completeness, while as many more affirm the existence of a perfect and unmistakable identity; and we have, therefore, as I have already pointed out, to seek the solution of the question on which side lies the truth in the established facts of the case, independently of a conflict of opinion which affords no safe foundation on which to rest our judgment.

I have already intimated an opinion that there must have been at all events a greater degree of resemblance between the defendant and Roger Tichborne than many of the witnesses for the prosecution have been willing to admit. Whether this resemblance was no more than what is sometimes found to exist between individuals wholly unconnected with one another, or whether it amounted to actual identity, is the question. There are certain coincidences, such as the movement of the eyebrows and the peculiarity of the walk, which, if the evidence were unanimous as to the degree in which they existed in Roger Tichborne, might materially assist us. But, unfortunately,

there is the same conflict about this as about all the rest ; and it may possibly be that these very coincidences, though apparent rather than real, seen through an exaggerating medium, may have operated unduly on the minds of persons predisposed to favour the defendant, and so may have led to the belief in his identity to which they have deposed. But though from the general evidence as to identity it may be difficult to arrive at a certain and satisfactory result, there are yet a few points connected with general appearance which deserve to be noted ; and there are certain particulars relating to physical conformation and personal peculiarities, and more especially to external marks, congenital or acquired, which are of vital importance to the decision of this cause. Let me bring these matters to your attention.

First as regards features. The witnesses who spoke to the identity of the defendant were principally struck with what they deemed to be the likeness of the forehead and brow. The undoubted Roger, as appears from the daguerreotypes, had a heavy brow : the defendant has the same. But as regards the forehead, the daguerreotypes, if we can trust to them, show in Roger an ample, but flat, forehead, while the defendant's forehead is a full and round one. Roger Tichborne's eyes, we have been told, were large grey-blue eyes, with a pensive expression. The size and the expression is well portrayed in the daguerreotypes. You have had abundant opportunity of observing the defendant's eyes and expression, and are able to form your own judgment about it. As regards the mouth and nose, two very important features, we are not in a position to make a satisfactory comparison, the defendant having had the misfortune to knock out some of his front teeth and to break his nose, and some of the bone has come away. Several of the witnesses, struck at first by the different appearance of the nose—a marked feature in Roger Tichborne's face—on the defendant explaining that he had such an accident, seem to have been at once satisfied that the nose must have been like Roger's.

As to hair, we cannot doubt that the colour of Roger Tichborne's hair was dark brown. Such appears to be the colour of the defendant's also, though some of the witnesses represent Roger's hair as of a darker hue. Indeed, it was suggested that the defendant had resorted to artificial means to darken the colour, the possibility of which has not, however, been established. It has been suggested that the hair grew visibly darker during the course of the former trial. Probably you may not think the evidence on this part of the case sufficiently certain to draw an inference from it unfavourable to the defendant. It is only in case you should be of opinion that the hair sent over from South America was the defendant's, as he originally declared, that the then colour of the hair, for the



reasons I before pointed out, would be fatal to the identity of the defendant.

Great importance attaches to the comparison of the ears, if you can come to any certain conclusion as to the formation of Roger Tichborne's ear. If we can trust to the daguerreotypes—and it is for you to judge how far they can guide or mislead us in the matter to which I am about to refer—if we can rely on the daguerreotypes, Roger's ear was remarkable for peculiarity of form. Every ear, as you know, has appended to it that which is called the lobe, the part of the ear which hangs below the gristle part which is above it; and though it is one of those things which one very seldom remarks—if you were asked the question with reference to the most familiar friends you have, whether the lobes of their ears were detached from the cheek, or closely attached to it, I dare say you would hardly be able to answer the question—at least, I speak for myself, and I am quite sure I could not tell about that, even as regards people with whom I am best acquainted—one thing we know for certain, all the medical evidence, I think, being agreed upon it, namely, that as the lobe is more or less detached from the face, or attached to it, at the birth of a person, so it remains to the hour that he goes to his grave. It increases in size with the growth of the individual, but the attachment or detachment of that part of the ear always remains the same through life. Now, if these daguerreotypes truly represent the ear of Roger, then the defendant is not Roger. For the defendant has a well-formed lobe, well detached from the ear itself, and from the cheek, and appended as it should be in the proper form to the ear, while Roger Tichborne, if we may judge from the daguerreotypes, appears to have had scarcely any lobe, and to have had it closely attached to the cheek, instead of having it pendant from the ear. It seems to me that upon this part of the case the strength of it is in the representation by the daguerreotypes. Evidence on the subject we have very little. Two witnesses on the part of the defendant have said that Roger had lobes pendant in the usual way. Mrs. Markham, the witness from Dublin, who says Roger came on three evenings to her house, says he had full lobes; and one of the Carabineers, I forget at this moment which, says the same thing. On the other hand, Mr. Scott, the infirmarian, says he particularly remarked that the lobes of Roger Tichborne's ears were small and closely attached. My Brother Lush observes that we have not only one, but two daguerreotypes, and they both agree in respect of the attachment of the lobe to the cheek. I do not know how far implicit reliance can be placed upon photographic art. Of that you must judge. If you are satisfied that the daguerreotypes truly represent Roger's ear, then the ear of the defendant does not correspond; and if we agree in the principle that in that respect

the lobe never changes, but remains throughout life what it was at birth, he cannot be the man. That, however, depends entirely on what view you take of the daguerreotypes. The oral evidence is extremely meagre, which probably arises from what I observed just now, that it is not one of those parts of the human countenance on which the eye rests, so as to enable us to say afterwards whether a person with whom we have been in daily or frequent intimacy happens to have a peculiar ear. It may sometimes strike one, but under general circumstances it is not one of those features in the human countenance which impress themselves on the memory, or which is likely to attract much attention.

I pass on to the comparison as to stature. Roger Tichborne, as we know, on entering the army, being then between twenty and twenty-one years of age, measured 5 feet 8½ inches. It was said that the defendant is taller. Mr. Gosford tells us that, recollecting the height of Roger Tichborne relatively to his own, he took the opportunity, when standing by his side on the platform at Gravesend, to measure the defendant by himself, and that he found him taller than Roger. One or two other witnesses have expressed a similar opinion. But the defendant produced two sergeants, accustomed to measure recruits for the army, who, having measured him, gave us his height as exactly 5 feet 9 inches. This, no doubt, would make him half an inch taller than Roger, but then the latter may have grown half an inch after his measurement for the army, although the military tailor does not appear to have ever altered his measure with reference to his height. In a letter from Sir James Tichborne to his wife, written during his visit to his son at Cahir in September, 1850, he says, Roger is certainly "taller than when I saw him last October, and is filled out and looking very well," having seen him just a year before. Probably, therefore, you would not think that the apparent difference of half an inch in the height of the defendant would materially affect the question. But the size of the defendant is a different thing. It is impossible to conceive a more glaring contrast than that of the lean, spare Roger Tichborne, who is described to us as having "no hips, no thighs, and no calves"—of whom we are told that his hips were not sufficiently large to keep up his sword belt, so that the tailor was obliged to have recourse to artificial means to keep it up—and of whom Major Kellett tells us that when he was dressed for hunting his boots were "a mile too large for his calves"—and the extraordinary and rarely paralleled instance of obesity presented to us in the person of the defendant. Do not, however, by any means understand me as saying that the present corpulency of the defendant is at all conclusive as to his not being Roger Tichborne. We have had no evidence on the subject.

As far as our own experience goes, we must all of us have known instances of persons, who, after having attained an age at which their habit of body might be supposed to be fixed, suddenly developed into exceeding corpulency. How far this may be the case in persons with no disposition to fulness or roundness of form, but previously of lean and spare habit, I am not aware. All I will go the length of saying is that I should conceive that a sudden development of size into extraordinary corpulency would be more likely to happen in a person whose bones were well covered with flesh, and who was stout and disposed to be heavy from the beginning, than in one who from his birth was the extreme of leanness. I am sorry we have had no evidence on a matter which is more a question of physiology than anything else. But in the doubt in which we are left, we ought not, I think, to assume the impossibility of the lean Roger developing into the man of huge bulk that the defendant is.

We have been told by several of the witnesses for the defendant that Roger Tichborne had small hands and feet. The members of the family say he had an ordinary hand, proportioned to his general size. All the witnesses who were examined on the subject, with the exception of Miss Braine, agree that the hand was a lean, bony hand with prominent knuckles. Mrs. Washington Hibbert says it was "a Tichborne hand," in other words, "a long bony hand with prominent knuckles." Miss Braine, who was only acquainted with Roger Tichborne for a fortnight, standing alone, says "the knuckles appeared dimpled, more like a lady's than a man's," with "dimples" in the place of knuckles, thus making the hands of Roger correspond with those of the defendant. It certainly strikes one as very strange that a man, otherwise so lean as Roger Tichborne certainly was when Miss Braine saw him, should have had the plump hand which that lady describes. But though you may think that Miss Braine must be wrong, and that the hand of Roger must have been something very different from what that of the defendant now is, the difference may be accounted for by the general enlargement in size. If the lean Roger can have developed into the huge bulk of the defendant, the hand may have changed from the lean to the plump one.

We have in like manner been told that Roger Tichborne's feet were small; and the defendant's feet, it is said, are so likewise. We have here something more precise to guide us. We have the exact measure of both supplied to us from their respective bootmakers; those of the defendant being Messrs. Bowley and Co., of Charing Cross, and Mr. Lobb, of Regent Street; that of Tichborne, the late Mr. Runciman. The measurements of the defendant's bootmakers, as given by Mr. Jeffery, who came from Bowley and Co., and by



Mr. Lobb, differed a little as to the length of the foot: they are as follows:—

*Mr. Jeffery.*

Across Toes . .	$10\frac{1}{2}$
Round Instep . .	$10\frac{3}{4}$
Round Ankle . .	$11\frac{3}{4}$
Round Heel . .	$14\frac{3}{4}$
Length of Foot } (Sevens, or) }	$10\frac{5}{8}$

*Mr. Lobb.*

Round Instep . .	$10\frac{3}{4}$
Round Ankle . .	$11\frac{3}{8}$
Round Heel . .	$14\frac{3}{4}$
Length of Foot } (rather under) }	10

(as regards length a difference of full  $\frac{5}{8}$ ).

Roger Tichborne's measure, as given by Mr. Taylor, manager to the late Mr. Runciman, from an entry made by himself, stood as follows. It is necessary to distinguish between right and left, as the size of the feet differs:—

*Right Foot.*

Across Toes . .	$8\frac{1}{2}$
Round Instep . .	$9\frac{3}{8}$
Round Ankle (Not given)	
Round Heel . .	$12\frac{3}{4}$
Length of Foot . .	$10\frac{3}{8}$

*Left Foot.*

Across Toes . .	$8\frac{3}{4}$
Round Instep . .	$9\frac{3}{8}$
Round Heel . .	$12\frac{3}{4}$
Length of Foot . .	$11\frac{1}{8}$

the difference in the length of the two feet being as much as a quarter of an inch.

The measures of these different bootmakers would not show any material difference in the important matter of length as regards the right foot; but the left foot of Roger is materially longer than the corresponding foot of the defendant; and it results plainly that in other respects the foot of the defendant is larger, though that may possibly be accounted for by increase of fat. It is to be further noted that in Roger Tichborne the feet are decidedly unequal in length, a peculiarity which does not appear to exist in the defendant. None such is shown in either of the measurements taken by his bootmakers. The bootmaker has also recorded the existence of a lump on the instep of Roger, and we have not heard of anything of the kind on the foot of the defendant. Whether such a thing might disappear in course of time I can offer no opinion.

Let us next see whether there are any personal peculiarities of original conformation which may assist us in our inquiry. You know we heard a great deal about the peculiar formation of the thumb, but I do not know whether to class that with congenital peculiarities—those which he had upon him at his birth—or to class it with things which have supervened since; because the defendant never has given, so far as I am aware, any account of how this peculiar formation arose—whether he had it from his infancy,

whether it came in the course of his boyhood or since—in short, how, whence, or why it came. Upon that we have had no information, and indeed we know from what has transpired in the course of this cause that it was only at a very late period in the former trial that this question concerning the thumb arose at all. Indeed it has been suggested that it was from some appearance in the daguerreotypes and photographs, when exhibited, as they were, to the defendant at the last trial, that the idea of this peculiarity of thumb first presented itself. No doubt the defendant has some peculiarity about the nail of one of his thumbs. Is it natural? or is it the result of accident? or has it been artificially produced? It has been suggested on the part of the prosecution, seeing that it was not brought forward until a late period on the former trial, after the daguerreotypes had been exhibited, that this peculiar appearance had been artificially created for the purpose of making the thumb of the defendant correspond with the apparent thumb of the daguerreotype. I do not know that that is satisfactorily established, although two eminent medical men, Mr. Barnard Holt and Mr. Seymour Haden, seem to think this peculiar appearance a thing of factitious and artificial creation—the possibility of which, however, is disputed by Sir William Fergusson. How that may be I do not know, but to my mind the inquiry is not worth pursuing, and is comparatively unimportant, unless we are first satisfied that Roger had this peculiar formation of thumb; and the question is, whether there is any evidence to satisfy your minds of it? The daguerreotype may show something, but whether that is the effect of the light, and is a mere accident, as will sometimes happen in photographing likenesses, I am sure I cannot tell. To me it appears to be exceedingly slight, if, indeed, there be anything; but of that you must judge. Notwithstanding the multitude of witnesses we have had, there is no evidence that I am aware of that Roger had such a peculiarity in his thumb, except that of three persons; and those are Captain Brown again, and Mrs. Neale, who was the barmaid or waitress at the inn at Melksham, and Mrs. Markham, the wife of the courier at Dublin. Captain Brown, no doubt, says that when he was playing at billiards with Roger Tichborne, in the course of those debauched evenings at Rio, he had an opportunity of seeing Roger's thumb, and of remarking the peculiarity; the more so, he says, as Roger had that peculiarity on the thumb which would be uppermost in playing billiards, and which, therefore, a person playing with him would be best able to see, that is the thumb of the right hand; but unfortunately the peculiarity of the defendant is on the thumb of the left hand.

Then comes Mrs. Neale. When did she see him? More than twenty years ago, when Roger came in a tandem driven by Mr.

Spurling to the inn at Melksham, and had a glass of whiskey and water, and she says that as he took it from her, she observed the peculiarity of his thumb, and has never forgotten it since. You will say whether that is evidence which carries conviction to your minds.

One of the JURY : She put it on the right hand too.

The LORD CHIEF JUSTICE : I had overlooked that. She too says it was on the right thumb, which is unfortunate. Mrs. Markham places the peculiarity on the thumb of the left hand, which would correspond with that of the defendant. But can you place any confidence in her testimony? This was the witness who said Roger Tichborne came to her house at Dublin, drunk, when she gave him vinegar to recover him, and who said she saw him with Lady and Miss Doughty at the Exhibition, in June, 1851, which was most improbable. You remember her demeanour in the witness-box, and must judge how far you can rely on her.

Let us see what we have on the other side. No member of the family ever heard of such a thing. If it had been the fact, at all events so far as regards the early life of Roger, it certainly was a thing to ask the mother. Lady Tichborne has never said a word about it. The defendant himself, instead of instructing his counsel at the former trial of this peculiarity as one appertaining to Roger, never suggested anything of the kind. Even now not the slightest suggestion has been offered to us as to when or how this peculiar formation arose. Yet, if the defendant is Roger, and if Roger had this peculiarity, he must know whether he had it from childhood, and, if not, how and when it arose. None of the family, called one after another on this trial and questioned as to this peculiarity of the thumb, had ever seen, or heard, or dreamt of such a thing. One or two of the witnesses who had been in the habit of associating with him, and had been placed in such a position as that it would seem impossible that they should not have seen it had it existed, were asked about it, but never had seen it. Lady Rawlinson when at Knoyle was in the habit of playing at chess with him, and when playing at chess you see your opponent's hand as he moves the men, and it would be a striking thing that it should not be observed if there was this marked peculiarity which the defendant exhibits. She never had seen it. Again, we have Captain Polhill Turner, who was stationed with him at Clonmel, where they had no great means of amusement, and used to play *ecarté* together of an evening for small stakes. Captain Polhill Turner must have seen his hand again and again, and I suppose would have remarked such a peculiar formation if it had existed, but he says he never saw it. Officer after officer, soldier after soldier, was allowed to pass without any such question being put



by the learned counsel. He cross-examined the witnesses for the prosecution, but none, I think, of the persons called on the part of the defendant, except the three witnesses I have referred to, were asked about this; and from beginning to end not a single one of the large body of witnesses who have been called on the one side and the other has spoken as to this peculiar formation in Roger, with the exception of the three, two of whom place it on the wrong hand. It is for you to say whether you think there is anything to satisfy you that Roger had this peculiar formation, or whether the defendant is entitled to the benefit of any such supposition as establishing his identity. So much for that peculiarity.

Another and a strange peculiarity has been insisted on by the counsel for the defendant. It is exceedingly difficult for me in the present state of this court to refer to it, but I feel satisfied I need not particularise it more fully, because I am quite sure you will understand at once what I allude to. This contention seems to rest on the same sort of foundation. There is no doubt there is a peculiarity of formation about the defendant. The question is whether there was any such peculiarity of formation about Roger. The learned counsel seems to me to have confounded (I do not know whether purposely or not) two things essentially distinct, which is peculiarity of formation on the one hand, and virile incapacity on the other. There certainly is no evidence to show that Roger had any peculiarity of formation—none. It is suggested by the learned counsel for the defence that he acquired on account of it a nickname in the regiment having reference to some such peculiarity. But, then, there is not the slightest evidence that he had any such nickname. Not a single officer of those who were in the habit of associating with him ever knew or heard of it. Mr. Talbot, who frequently bathed with him, knew nothing of such a formation. Chatillon and Gossein, who must have known of it had it existed, were not asked about it. Then the learned counsel goes a step further and says that it implied the other thing as well, and he refers to the letters of the mother, who makes inquiry whether the defendant was married or not, as showing that she had that in her mind. But it is impossible not to see that the letters lead unmistakably to the very opposite conclusion. In every one of them she assumes the possibility of his having married and having children. She assumes that, in all probability, having got to a certain age, he had by that time married and had children, and she is only anxious to know whom he has married, and that his marriage shall have been in such a form as to insure its validity in point of law and the consequent legitimacy of the children. Yet the learned counsel assumed that she believed the contrary, and, what is more, he suggested that this lady, in order to be certain whether this man was her son or not, had taken care by personal inspection to ascertain the

fact of his peculiar conformation! A more revolting suggestion, or one involving more gross indelicacy, I never heard made, and I could hardly believe my ears when it was made. That Lady Tichborne might have desired that a medical man should ascertain the fact is possible; that she should examine into it herself is what one cannot believe. But the inconsistency of the learned counsel with reference to this part of the case was not confined to this. There was inconsistency of a still more striking character; for while he assumed a certain incompetency on the part of Roger Tichborne, and sought to account by it for the gloomy state of spirits into which Roger appears from time to time to have fallen, and which is exhibited in some of his letters—as arising from the consciousness on his part of the hopelessness of ever forming a matrimonial union or becoming the father of a family—referring you to that extraordinary doctrine about the withered leaf, which assumed a knowledge of Hebrew both on the part of Roger and Lady Doughty, as also a knowledge of what the withered leaf was the emblem of to the Hebrew mind—though I am assured by a Hebrew scholar that the learned counsel's idea on this matter is an entire delusion—on the other hand, when it suited his purpose, he represented Roger as a monster of profligacy (including always the visit to Preston, which must not be forgotten) and as a man leading a licentious life, incapable of conjugal love, but marvelously ready for any love of an illicit description. My learned brother reminds me of a subject I did not want more particularly to refer to at this moment, which is that the counsel dwell especially upon the seduction of Miss Doughty. It is one of the main points of the case on which he relies. He asks you to believe in that, because without it the defendant's statement as to the sealed packet would fall to the ground, and he would have exhibited an ignorance of that packet which would be fatal to him; and, therefore, the learned counsel asks you to believe in the seduction of the cousin. Incapable of marrying her, he was quite able to seduce her. The topic is an unpleasant one, which I do not want to dwell upon, and I dismiss it. It is one of those things which in itself involves such a degree of absurdity and inconsistency that I am quite sure—and I should be failing in my duty if I did not say so—you will not give any effect to it. But before I quit the subject of this last-mentioned peculiarity of formation, I ought to observe that while, unless you are satisfied that it is one which Roger had, it does not advance the defendant's case, if you are satisfied Roger had it not, its presence in the defendant affords a powerful argument against his being Roger Tichborne.

So much for the peculiarities of formation in the defendant. I pass on to that which may afford us a safer and more conclusive test—I mean any personal marks which were either to be found or not to

be found on Roger, and which are or are not found on the defendant—as throwing light on the question of identity. And in dealing with this subject we shall have to consider the important medical evidence. First, are there any peculiar characteristic marks on the person of the defendant which were to be found on the person of Roger? Or are there any wanting of those which Roger had? Are there any found which Roger had not? Now, personal peculiarities of this sort may be divided into two heads—those which are congenital, and those which have been occasioned by supervening external circumstances. And first as to those which are congenital.

Now, the first thing we know with regard to the defendant is that he has on his side a brown mark. About that there appears to be no doubt or question. Had Roger Tichborne any such brown mark? If he had, although it might not be impossible that two persons might be born with such a congenital mark, nevertheless, it would be a very singular coincidence, and in any point of view it would be a very strong fact in favour of the man who came forward to say he was Roger Tichborne, if, having a mark of that sort, he could show that Roger Tichborne had such a mark. But what evidence have we that Roger had any such mark? The only evidence I am aware of is that of Captain Brown, who told you that strange story of having given, at Rio, a part of his room to Roger as a sort of asylum, when Roger was so drunk at night that he could not go to his own hotel, and of having seen him next morning naked in his bath, when he saw there was a brown mark on his side corresponding to that of the defendant. I do not know how far you will attach any importance to that statement of Captain Brown. He is the only witness who speaks to that fact, against which we have several witnesses who appear to have had full opportunity of being acquainted with the fact, if it ever existed.

In the first place, the existence of such a mark is unknown to the family, and, what is more important, was unknown to Roger's own mother. Because you will remember that when the defendant, in his first letter, challenges her as to this particular mark, she makes no answer to him, and when Mr. Gibbes calls her attention to the fact that she has given no answer to that challenge, she answers that she has no knowledge of any brown mark on Roger's side. It is true there is a witness, a Mrs. Thompson, a lodging-house keeper, who says Lady Tichborne called on her shortly before her death, and asserted that the defendant was her son, and said she was prepared to prove it by reference to a brown mark which he had on his side. But there was no living person, I mean in the shape of a nurse, or any one of that sort, called before us to prove the fact, or to say that she had told Lady Tichborne of it; and I am, therefore, led to doubt the accuracy of Mrs. Thompson's story, or, if I am bound to believe it, I must say it makes a bad impression on my mind with reference to



the sincerity of Lady Tichborne as showing the length she was prepared to go to establish the identity of the defendant. If she knew nothing about it in 1866, it certainly does seem a remarkable fact that in 1868, without having had anything, so far as we are aware, to refresh her memory, she was prepared to adopt the statement and assert the fact of the brown mark as a proof of the identity of the defendant as her son. Had she received information about it in the meantime from any one, that person might have been called, but it has not been suggested that there is any one who could have afforded the information. But if the mother, as she stated in answer to Mr. Gibbes, had never known or heard of such a mark, can we believe in its existence? Could such a thing have been without a mother knowing or hearing of it? Then, again, Lady Doughty had never known or heard of it. That, however, is quite possible, and still it might exist, because she did not see the boy till he was four or five years old. Gossein is a more important witness in this matter. Gossein knew Roger from infancy, and if there had been this remarkable mark on the boy's side, the probability is that he would have seen it or heard of it, but he never did. He was in the service from 1830 to 1844—that is, from the time Roger was a year old until nearly the time he left Paris; and besides not having heard of it from the nurses or any one else, he used constantly to attend on Roger, has seen him in boyhood very frequently undressed, and used to go and bathe with him. On the last two occasions on which they went to Normandy and Brittany, he bathed with him very frequently for a whole month together, and if there had been that mark on his side he says he must have seen it.

Then Chatillon is another witness who must have seen it, one would think, if it existed; because Chatillon used to take the boy to the swimming baths in Paris, when he was learning to swim, and although he often saw him undressed, he says he never saw anything of the kind. When he went to the baths at Pornic they used to bathe together, and he saw no mark. Again, we have a gentleman who used to stay at Tichborne when Roger was there—I mean Mr. Talbot. He used to bathe with him at the bathing-place which there is there, and saw him frequently undressed, but never saw anything of a brown mark. At the same time, as I observed with reference to Arthur Orton, the mark, though of some size, is faint in point of colour, and may have passed unnoticed. That is the negative evidence on the subject, and upon it you must say whether you are at all satisfied Roger had a brown mark. And while on the one hand, if there was reason to suppose that Roger had that congenital mark, it would be very strong indeed to show that the defendant was Roger; so we must look at the question *e converso*. Suppose Roger had no brown mark and the defendant has one, there could not be

stronger proof that the defendant is not Roger Tichborne. While it would make powerfully in his favour in the one case, it of course makes equally against him in the other.

I now come to another order of marks and personal peculiarities—that is, marks which were not congenital, but have come after birth. We know that poor Roger began at an early period to suffer in point of health, or his over-anxious mother thought he did, and the result was that they applied to him that cruel process of the issue. But was it an issue, or was it a seton? It is necessary to establish that fact before we proceed further.

Now, no one has been found, except the defendant, to say that the artificial sore produced on Roger's arm was the effect of a seton; while we have a very strong body of evidence indeed to show that it was an issue. The defendant has said that it was a seton, and he has not only pledged his recollection to the fact, but also to the details of the process. So that it can admit of no doubt whatever. He says it was an artificial sore created by a thread passed through two holes, where the thread went in and came out, and that the irritation of the sore was kept alive day by day by the drawing backwards and forwards of the thread, or silk, or whatever it was. Was that the case or not? Was it a seton—that is to say, such a process as he represents—or was it an issue? Now, we have several witnesses on that. First, Gossein, who says that while the boy was quite a child this issue was created in his arm, and that having frequent occasion to pass through the room in which Roger slept, in order to go to his master's room, which was immediately beyond it, he has often, in going in and out, seen the nurse dressing the sore, and he gives a description of it. It was what he calls a *cautère*, which is the French for an issue. He says, "It was usually dressed with a pea. I never helped to dress it, but was often present when it was dressed. The wound was washed, a pea put in, and a bandage was applied, a long piece of linen. It began as early as 1834 or 1835." He says it was kept open for some years. We know it was kept open till the year 1838, when it was stopped and closed at Upton.

Then Mrs. Nangle tells us she was dining at the house of her brother on one occasion, and she remembers the boy coming in to wish them good night before he went to bed, being then a little fellow. He was then about six years old, and he spoke to her in French: "*Ma tante*, come and see my *cautère* dressed." She went into the room and saw it. It was a hole with a pea in it: she was acquainted with the process, one of her own sons having had such an issue. "The arm is rubbed with caustic and the pea tightly bound over it so as to make a bad wound." She says, "It was an awful sight. It looked quite raw, with a hole in the middle, into which

you could have put the top of your little finger." Then we have Mr. Henry Dauby Seymour, who does not say he saw it, but says it was known perfectly well in the family that the boy had this artificial sore, and that it was done with a pea. He says, "I do not remember the pea, but I remember my mother constantly wishing it stopped, and saying it was a foolish practice of the French doctors, and having long discussions about it, and urging Mrs. Tichborne to have it removed. Q. In these discussions did you hear the pea mentioned?—Yes, constantly." Then he is asked, in cross-examination, a question which I should have thought a sound discretion would have induced the learned counsel to avoid. He gets the fact from Mr. Seymour, that although this was what unquestionably in medical language would be called an *issue*, as distinguished from the *seton* about which the defendant has spoken, in the family it was always talked of as a *seton*. A dangerous question, for this simple reason, that if it was always spoken of as a *seton*, that fact may have suggested the adoption of a *seton* by the defendant, instead of an *issue*, which, unless all this evidence is to be disbelieved, undoubtedly was the thing which Roger had.

The next witness is Chatillon, who accompanied Roger to England when he came with his father in 1838, at which time he was between nine and ten years old. He went to Upton, and Lady, then Mrs., Doughty was so shocked at the appearance of the boy, with this miserable sore on his shoulder, that she pressed hard to have it stopped, and, getting the acquiescence of his father, she sent for the doctor, and the pea was taken out, and the arm allowed to heal. Chatillon says, "I dressed it all the time I was in England, and then it was closed with the consent of Sir James, at that time Mr. James Tichborne, the family, and the doctor, but the marks remained always afterwards." Lady Doughty says in her deposition, "I remember my nephew coming over. I remember he had an *issue* in his arm at that time. It was open when he came; it was kept open by two peas. There was only one sore. The peas were taken out and it was left to close." Then there is Mr. Talbot, who was at Upton in 1838, and was intimate with the boy. They were boys together. He is asked: "Did you ever see on his arm any mark or marks?—Yes. Q. First of all let me ask you, was there any mark at all above the elbow?—Yes. Q. What was the mark above the elbow?—An *issue* mark. Q. Was the *issue* open when you first saw it or not?—I do not know how the doctors would describe it. I should describe it as being open, but I was told it was going through the process of being healed up." That was in the year 1838. He is asked to describe it, and he says, "It was a large red mark, and running; nasty-looking—a deep hole." He said it was large enough to have put in a small horse bean, and the circumference of it, which of course was



the extent of the part affected, not the sloughing sore, was as big as half-a-crown. "First, there was a hole big enough to put a horse bean in, and round the circumference of the hole there would be a mark extending still further, making the whole the size of half-a-crown." Then a juryman says, "A little inflammation I suppose you mean?—A little inflammation."

Now, what says the defendant? In the first place he is examined by his own counsel, and he makes two most serious mistakes—the one is as to the time of the existence of this sore; the other as to the nature of it and the process by which it was produced and kept alive. He was being examined by his own counsel with reference to his coming over to this country on the occasion of his uncle Sir Henry's funeral, and having stated that he came to the funeral, he is asked by Mr. Giffard, before he proceeds with the examination about his going to Stonyhurst, this question: "How long did you stay at Tichborne upon that occasion?"—That is the occasion of his uncle Henry's funeral—"How long did you stay on that occasion? I mean was it hours or days?—A few days, from four to five days; it might have been a week. Q. From that where did you go to?—I went from there to Stonyhurst. Q. I do not know whether you remember having anything the matter with your arm on that occasion, or whether it was the shoulder?—Yes, I had a small seton put in my shoulder. Q. Was it on that occasion?—Yes, I think about that time. Q. Whereabouts was that?—Just on my shoulder here. (Touching his left shoulder). Q. Do you remember how that was dressed, or with what it was dressed?—It was dressed sometimes with one thing and sometimes with another—I think with ivy leaf. Q. Do you remember who brought the ivy leaves for the dressing?—Probably I got them myself, but I do not remember." On cross-examination, the Solicitor-General reads what the defendant had said in answer to Mr. Giffard, and asks: "That is so, is it?" Then the defendant shifts his ground and says, "No, I think not: I did not understand it to be: in answering the question I certainly did not understand it to be put in that way. Q. I am reading to you from the notes, and this is Mr. Giffard's question, not mine. Just attend to me. 'I went from there to Stonyhurst. Q. I do not know whether you remember having anything the matter with your arm on that occasion, or whether it was on the shoulder?—Yes, I had a small seton put in my shoulder. Q. Was it on that occasion?—Yes, I think about that time. Q. Whereabouts was that?—Just on my shoulder; there (touching the place).' Q. You cannot have misunderstood; it is very plain. Was it then?—No, it was done previous to that. Q. Done previous, was it?—I think so. Q. When?—I do not remember when it was. Q. Surely you can tell me when you had a seton put into your shoulder? I do not mean

the day, of course, but you can tell me about the time?—It was some years previous to that. *Q.* Was it put in at Tichborne?—No, I think not.” Again the Solicitor-General reads a part of the former examination. ““Do you remember how it was dressed?—It was dressed sometimes with one thing and sometimes with another. *Q.* Is there anything you remember about it; what it was dressed with? If not, we will pass on?—I think with ivy leaf. *Q.* Do you remember who brought the ivy leaves for the dressing?—No, I really do not; probably I might have got them myself.” Then the Solicitor-General asks, “Is that your forgetfulness, or what? This is all at that time, you know?—No, I did not wish to imply it was at that time. *Q.* But you are asked, and it is not I, it is Mr. Giffard who asks you, whether it was on that occasion, and you say you believe it was. When was it, if not then?—I think it was some time previous to that. *Q.* Where was it done? was it done in England, France, or where?—I believe, to the best of my memory, it was done in France. *Q.* At what time and under what circumstances?—I do not remember the occasion of it being done. It was done some time previous. *Q.* Who helped you to dress it?—Who helped me to dress it? *Q.* Yes?—Do you mean day by day? *Q.* Yes. You talk about these ivy leaves; I suppose you did not always dress it with ivy leaves yourself. Who did besides? anybody?—Different people who were near me.” Then there is a good deal of questioning about where it was the sore was dressed with the ivy leaves, and at first the defendant said he believed it was done in France, but on being pressed by the Solicitor-General changed his statement, and said he thought it was in England, and ended by saying he thought it had happened at Upton, somewhere about the year 1838 or 1840. Then he is asked whether he has seen Moore since his examination-in-chief. The object of that was to lead to the inference that Moore, who was in the service of Mr. Edward Doughty at the time Roger was at Upton, having heard him say he had this sore at the time he came from Paris to attend his uncle’s funeral, had told him he had made a mistake, and so brought about a change from the year 1845, when the thing was altogether impossible, as the issue had then been closed for at least seven years; and so the defendant had got right, and now stated that it occurred in France some years before. However, the cross-examination about that I pass over. I come to that which is far more material, namely, what the thing he calls a seton was. He is asked, “What sort of a thing was it? A seton has a particular meaning. What kind of thing was it in your shoulder?—It was merely a few threads of silk, I think, or worsted; I do not recollect rightly which. *Q.* A few threads of silk or worsted?—Yes, I do not recollect which. *Q.* That is a proper seton—called in surgery a seton?—Yes. *Q.* Then

what happened to the threads of silk or worsted?—What happened to it? *Q.* Yes; you say some threads of silk or worsted, what was done with that?—They were left in. *Q.* What was done with them? anything?—Really, I do not follow you now; do you mean what was ultimately done with them? *Q.* No. Do you mean there were some twists or threads of silk and worsted passed through the flesh and left alone?—Yes, left alone. *Q.* How long?—They were opened for a long while. *Q.* Open for a long while: did the flesh keep open then, or what happened about it?—No, I think they were taken out ultimately. *Q.* Taken out ultimately?—Yes, I think so; to the best of my knowledge. *Q.* But you mean they remained in: was anything done to it between the time they were put in and the time they were taken out?—They were dressed. *Q.* What was dressed?—What was dressed? *Q.* Yes; you know if you were to stick a thing through your flesh it would be a sore which would very soon heal?—No, it would not, as long as it was kept open by the seton. *Q.* That is what I want to know. How do you mean kept open? What was done to keep it open?—What was done to keep it open? *Q.* Yes?—I am not aware anything was done to keep it open. *Q.* Do you mean to say nothing was done to keep the seton open at all?—I think not. *Q.* I will not assert, we will see whether, if that was not done, it would not heal up. That is your recollection?—That is my recollection. *Q.* A twist of silk or worsted driven through, left there a certain time, and then taken out?—It was taken out after a time; it was always kept movable. *Q.* That is what I ask you. How do you mean kept movable?—It was always pulled up of a morning or pulled down. *Q.* That is the sort of thing it was?—Yes. *Q.* And you have told us it was about here (describing) somewhere?—Somewhere about the shoulder. *Q.* Who was it pulled it up and down of a morning?—Whoever it was assisted me in dressing it. *Q.* Who was it, can you remember?—Yes, generally the maids in the house, I think. *Q.* Do you mean in Paris?—Yes. *Q.* And who at Upton where the ivy-leaves came?—Really, I do not remember the name of who it was.” Chatillon told us he used to dress the issue. “*Q.* That is your recollection?—Yes. *Q.* And where was it closed up, and when?—I really do not remember when. *Q.* Who had closed it up? Cannot you remember who had your seton closed up?—No; I do not remember. *Q.* Nor where?—No, I do not remember where it was. *Q.* Who were you staying with, or living with, at the time it was closed up—your father and mother, Mr. and Mrs. Tichborne?—I do not remember where it was. *Q.* I thought you told me it was 1838 or 1840? You gave me a date: cannot you tell me who it was closed up your seton?—No, I do not remember. *Q.* What effect had the seton upon your arm?—What effect?



Q. Yes?—It relieved me from the spasms a good deal. Q. Relieved you from spasms?—Yes. Q. What spasms were you suffering from?—I am not aware that it was any particular kind of spasms. Q. But where were those spasms you suffered from?—In the chest, near the heart. Q. Spasms of the heart, was it, or near the heart?—Yes. Q. Connected with the heart?—Yes. Q. Spasms connected with the heart, for which you had a seton in the shoulder?—Yes. Q. And this relieved you?—Yes, I believe it did. Q. Cannot you tell me now under what circumstances it was that it was healed up?—I dare say I could, if I thought a little about it. Q. I should be much obliged if you would think a little, and tell me?—He considers and then says, “No; I have no recollection of when. Q. You have given us the when; I have not pressed you at present about that; I will take your date, 1838 or 1840. Can you tell me now the circumstances about it?—I am not aware that I gave you that date as being healed up. Q. You gave me the date of its being put in, and you said it was in for a certain time, not very long, as I gathered from you, and then healed up; how long was it in?—I have no recollection of how long it was in. Q. Surely you can tell me how long a seton was kept in your shoulder, and when it came to be healed up, and by whom?—It was kept open several months, but I cannot recollect. Q. Who advised it being healed up—the doctor?—I cannot tell you, I am sure, who advised it. Q. Now would it surprise you to learn that the real Roger Charles Tichborne had not a seton at all in his shoulder, but a seton in his arm, kept open with peas, and covered with a piece of silver, and that the arm wasting under the seton, Lady Doughty closed it up?—It does not surprise me at all to hear you say so. Q. It does not surprise you to hear me say so?—No, because it was not so. Q. It is false?—Yes, it is.” So that you see we have there the most distinct statement that could possibly be made, that it was not an issue kept open with a pea, but a seton kept open by a piece of silk or worsted passed through the two orifices, and pulled up and down morning and night, which is the true description of a seton. But all the evidence points to its having been an issue, and nothing has been adduced to contradict it. Moore, who was in the family at that time, and I presume could have told us how it was, has not been called. Now if this was in reality an issue, kept open by this cruel process until the boy was nine years old, as of course it must have been a source of constant pain and annoyance and mortification to the poor child, though boyish experiences may vanish from memory in after years, that is a thing that I should think would not; but the defendant undertakes to say that he has knowledge and memory about it, and so saying, he describes, not the thing that was, but the thing that was not. When the Solicitor-General puts it to him that

what Roger had was an issue, he declares roundly that "it is false." Can this be the result merely of defective memory? If not, how has he fallen into that error? It may have been, as I suggested just now, that having heard this called a seton, and having acquired a knowledge of what a seton is, not being aware of the body of evidence by which it would be shown to have been an issue as distinguished from a seton, he represented it as a seton, which in fact it was not.

The next question is, has the defendant any sign of such a mark? Well, we find two marks of punctures at a distance from one another, such as probably would present themselves from the openings caused by the formation of a seton. Are those real? or are they artificial? Are they marks of the two orifices of a real seton? or are they artificial creations for the purpose of leading people to suppose that he had the corresponding marks which he supposed Roger, who he imagined had had a seton, would have had?

Now, the surgical evidence agrees on this point, that the effect of a seton, when kept open for any length of time, is to create the complete destruction, not only of the skin, which may recover itself, but of the tissue below the skin, which never does. Induration of the tissue takes place, and though the tissue heals when the sore is stopped, the induration never afterwards disappears, and you can always tell whether there has been a seton in a person's shoulder, or wherever it is put in, by feeling the hard, indurated ridge which exists between the two marks where the two holes have been. Of that there is no trace in the defendant's shoulder. It is true the medical authorities say if you put a seton in only for a very short time and stop it after a few weeks, or perhaps even after a few months, a sufficient destruction of the tissue may not have taken place, and the consequence might be that in the course of time the whole thing might heal again. But they all agree in this, that, supposing the artificial sore is kept in actual operation for two or three years, as was the case with Roger Tichborne, the induration would remain for ever afterwards, and a man would carry it to his grave.

We have had four medical gentlemen before us, Mr. Barnard Holt and Mr. Seymour Haden on the part of the prosecution, and Sir William Fergusson and Dr. Wilson on the part of the defence.

First we have the evidence of Mr. Holt. He says distinctly that the marks on the defendant's shoulder are not the marks of a real seton, because the intervening space is perfectly natural, soft and pliable, and affords no trace whatever of any induration, or any indication of any tape or thread having passed through the surface between those marks. And then he describes what the appearance would be if there had been a real seton for anything like the time this artificial sore was kept open on the arm of Roger. He admits

that there may have been a seton on the defendant's shoulder: because a seton kept up for a short time may not have the effect of destroying the tissue so as to leave an indestructible mark. "But," he is asked, "suppose the seton had been kept there for two years, then the induration must necessarily occur?" He answers, "That is it; a seton might be worn for a short time, about two or three weeks, and if it is then taken out there might not be any intervening hardness. There would be for a short period, but that would gradually subside and leave a perfectly healthy interval between the two points of entrance and exit." Then he is asked, with reference to one of the points made by the defence, whether the marks on a fat person are more apt to disappear than upon thin, lean persons, and he says, "No, I do not think so at all—not if those marks are the result of the destruction of the skin and tissue beneath. The tissue beneath is never replaced when it has been once thoroughly destroyed; there is always an indurated cicatrix." Mr. Seymour Haden, another great surgical authority, agrees as to the permanent induration which necessarily results from the application of a seton. On cross-examination Mr. Haden was asked as to the appearance of a seton: "Is that induration of the skin which you speak of, which is caused by the destruction of the tissue after the skein or ribbon has been in a considerable time, modified by years as it gets softer?—No, it remains. Q. Years will make no alteration in it?—If the seton tape or skein has been in long enough to destroy a certain portion of the true skin, that portion is never reproduced, and therefore the mark is permanent. Q. The mark, as I understand you, is indicated by induration?—Yes, I mean the induration is permanent. Q. The distinct line that you feel when you touch it, is that never modified in the course of time? Does it never grow less?—It cannot, because the tissue which forms it is for ever destroyed. Q. That would go to the replacement of the tissue; but surely length of time may modify it, so as to make the induration less hard? Would not that happen by length of time?—I do not see how it could possibly happen. It is quite unknown to me. Q. It would always remain in the same degree of hardness, if once the hardness is established?—Yes; that is the result of my experience.

Sir William Fergusson was called for the defendant, and he was asked this: "You had been told there had been a seton there?—That there had been a seton about the shoulder somewhere. Q. And you examined to see whether there was a mark of the seton?—Well, I saw those two marks, but I could not recognize any mark of a seton otherwise. Q. Do I understand you to say you did recognise those marks?—No, I recognized these two marks; they might have been the two ends of a seton, where the seton had passed in and the seton had passed out. Q. Do I understand you to say



a seton might have been there?—There might, but there were no indications to that effect. The LORD CHIEF JUSTICE: Are there any indications besides those two marks?—Not that I could make out. Mr. JUSTICE LUSH: What is the intervening space?—About an inch and a quarter. Q. Natural or what?—Oh, natural, between those two points that I refer to. Mr. McMAHON: Might a seton have been there without leaving any but these indications?—I have stated, there are no strong indications of a seton, and I think there would be more indications than those. My impression is that these are marks altogether independent of a seton. Q. That is your opinion?—That is my impression.” Then a gentleman of the jury says, “That depends in a great degree, does not it, on the time the seton is kept in?” The answer is, “It would be more likely to be distinct if kept in a long time, but any seton almost would have left stronger indications if used for any reasonable time for the treatment of disease. Q. Take a twelvemonth?—Twelve months or six months. Q. There would be stronger indications than you found?—There would be stronger indications with that amount of irritation.” Then I ask: “If I understand you, and I am very anxious not to misunderstand you, your opinion is that there has not been a seton there?—I rather lean to that view, my Lord, that there has not been a seton there. Q. Is that your opinion?—Yes, I say so.” Then we have Dr. Wilson, who is in conflict with Mr. Holt and Mr. Haden, and who goes further than Sir William Fergusson, for he says with reference to the seton marks that there is some induration if you adopt the right way to find it out—induration which would indicate the real existence of a seton there, which, though it may not be discoverable by the eye, is by his process. He says, “On rotating the skin over the places, there is decidedly a corded impression made to the finger, and the intervening space.” Then I ask, “Do I understand the corded impression is from the intervening space?—Where the marks are, my Lord; where the remnants of those marks are. Q. Not the space between?—No. Q. You mean under each of these marks?—Under each of these marks. Dr. KENEALY: Can you discover anything like a ridge?—That is what I should call like a ridge.” Then I say, “I do not know what you mean by a corded impression?—It is a feeling like as if there were fine threads underneath, the same as you would get by rotating your finger over a cicatrix.” So that he says in the result it is consistent with there having been a seton there. Dr. Kenealy asks: “Should you say they were consistent with a seton having been there in former years?—It may have been so. Q. It might have been a seton?—Might have been a seton.” Still this gentleman does not go the length of saying that there can have been a regular seton there for two years, and the corded impression he

speaks of is only under the marks, and not in the space intervening between them, where, according to the evidence, there would have been induration had the seton been kept in action for any length of time.

It may be taken for certain, therefore, that of any induration such as would have resulted from a seton kept open for any time, there is no trace at all about the defendant, and therefore these two marks cannot have been the remains of a seton kept alive for the time that Roger's artificial sore was kept open on him. Then what is it? Is it a thing that he has put there purposely, in order to make it appear that he had marks which would correspond with the marks Roger would have if he had been alive? or is it, as has been suggested as possible, that they first tried a seton on Roger, but discontinued that and substituted an issue? Of that we have no proof whatever. It is a mere suggestion, like many other things; still it is a possibility which should be taken into account.

But we have a further inquiry to deal with. That Roger had an issue there can be no doubt. Has the defendant any marks of such a thing? As we have just seen, the defendant on the former trial asserted that he had had a seton. But the evidence having shown irresistibly that Roger Tichborne had an issue and not a seton, on the present trial new ground was taken, and it was attempted to be shown that the defendant had the mark of an issue on his shoulder. And there is no doubt he has a scar on his shoulder, which, however, until the present trial, was treated as the result of foreign vaccination. Can it be ascribed to the presence of an issue? We have the evidence of Mr. Holt as to this. An issue he describes as being "the destruction of the skin and the tissue beneath the skin, of some definite form, either by caustic or burning. To cause that effect it has to be kept open; and it is usually kept open by peas or some foreign substance introduced into the wound and strapped down with strapping, the object being to keep a running sore; and when a running sore has been created in that way, when once the pea or foreign substance is removed, and the sore is allowed to heal, the scar remains for ever; no time can obliterate it." Then he is asked whether on the defendant's shoulder there is any trace of such an issue, and his answer is, "No trace whatever." Upon this he was very properly pressed in cross-examination. "You say you are perfectly certain there was no issue?—I am perfectly certain there was no issue." Then he speaks again of another characteristic sign of an issue. He says there is the effect of gravitation, by which the open sore has a tendency to work itself downwards, the wound being drawn downwards from the effect of gravitation. Then he is asked, "The pea having been allowed to be in for a year or two, and then removed for the purpose of allowing the sore to heal, would the scar be

indelible, and be carried by the man to his grave?" And he answers, "Absolutely indelible."

Then Mr. Seymour Haden is asked whether there is any mark of an issue on the defendant's arm. "Did you find any trace at all of an issue?—Not the least." With reference to the larger marks on the arm he is asked, "Now with reference to the other marks upon the arm, there is one a larger mark with many punctures?—I have understood you to be examining me on that mark upon the assumption that it was the mark of an issue. Q. I will put it—nowhere in the arm did you find the trace of an issue?—Nowhere. Q. Could you account in any way for the larger mark there was on the arm?—No, we were unable to account for it. We tried to account for it, and we could not." There is a large mark, and that mark seems to have baffled the medical gentlemen. Until this trial certainly that has always been taken to be a mark of foreign vaccination. It was so introduced on the former trial; it has always been so represented on the part of the defendant. As early as the interview which took place with Colonel Greenwood, at the railway station and in the train, Colonel Lushington, to whose knowledge this particular mark had been brought, challenged the attention of Colonel Greenwood to it as a mark of foreign vaccination, in order to lead to the inference that the defendant was Roger, Roger having been born in Paris and vaccinated there; and so it was always talked of, and it was accepted by Sir William Fergusson at the last trial as the result of foreign vaccination. On this present trial it was started that this mark upon the shoulder, which the surgeons spoke of, was the result of the issue, and questions were put with reference to it. On cross-examination, Mr. Haden is asked, "What was there about that larger mark on the arm which makes you at all unable to account for it?—It is not a mark which is the result of any accident, or any surgical proceeding known to me. Q. Can you form an idea how it was made?—No. Q. It is beyond your surgical science?—Quite."

On the subject of the mark on the defendant's shoulder, Sir William Fergusson was asked: "Did you observe any other marks on the left shoulder?—Yes, there is a very distinct mark, which my attention was called to as being the mark of vaccination." That is the mark in question. "Q. That is on the left shoulder?—On the left shoulder. Q. Is that in the vaccination place?—In the usual vaccination place. Q. What is there there? What is the appearance of the scar?—There is a scar which it would probably require a shilling to cover, or even possibly larger than that, which might be supposed to have been an ordinary pock-mark from vaccination, or it might have been produced in some other way by some other cause of irritation. Q. What other circumstance do you think would probably have caused it?—There might have been a running sore there.



Q. Would an issue be such a running sore as to cause it?—It might possibly.” On cross-examination he is asked whether, if there had been an issue, the whole skin must not have been destroyed. He does not admit that; and it is carried through a long course of cross-examination, of questions and answers, and the answers are of a very scientific character, no doubt, but science sometimes in its practical application uses somewhat ambiguous language, or, at all events, language which, to the mind of a layman, does not carry anything quite intelligible with it. I read the evidence through yesterday, and I must say, though no man has a greater respect for Sir William Fergusson as a scientific authority than I have, I never read anything which to my mind was more perplexing than the evidence of Sir William Fergusson on this point. He goes into a variety of speculative possibilities, out of which one cannot get any definite understanding. I say it with the greatest possible respect for Sir William. All those speculative possibilities seem to go in one direction. You heard his evidence, and will be able to understand what I have just said. I do not want to draw invidious comparisons. Mr. Barnard Holt and Mr. Seymour Haden may be right or wrong: I do not say they are greater authorities; but their evidence is distinct and precise, and one knows what they mean. I ought not perhaps to say anything about Caledonian caution, but Sir William is a Scotchman, and the difficulty of getting a definite and precise opinion from him may arise from characteristic caution. I do not know whether I ought to say so of people of that country generally, but they are supposed to be a little over-cautious, and so we have here speculative possibilities backwards and forwards, and one gets at no definite result. One thing, however, is clear, that up to the time this theory was started, Sir William had never looked upon this other than as a mark of foreign vaccination, which possibly it may be—whether it can be considered as the result of an issue I do not know. The two witnesses for the prosecution, Mr. Barnard Holt and Mr. Seymour Haden, say it cannot. They agree in saying this is not the mark of an issue; Sir William Fergusson leaves us in uncertainty; but Dr. Wilson comes forward and says that, in his opinion, it is, or, at all events, it may be, though I think he too only speaks speculatively. Speaking of this mark, he says, “That mark would be covered, I should say, by a shilling. It is a number of indurations, looking as if it had been an ulcerated surface that had healed up by small islands of skin. When an ulcer has not entirely destroyed the true skin, which it is very difficult to do, these little dots of true skin at the bottom of ulcers form distinct spots for the formation of new skin, until the whole process of healing has been completed, leaving the cicatrix very much in a honeycombed appearance. DR. KENEALY: Now I suppose you have seen marks that have been made by pea issues?—I have. Q. Is there any resemblance between these and

those marks?" Then we get into possibilities. "It is quite possible that such an issue might have made such a mark, and very likely." Then my Brother Lush says, "You say 'Very possibly;' I do not understand you; I do not know what is not possible. You say 'very likely?'—It is quite likely, my Lord. It would depend upon the kind of pea or irritating substance that was used; if it were one single pea, or if it were small particles of an irritating substance broken up, you would have the whole surface broken. Q. Do you mean this might have been the remains of an issue of that kind?—Precisely, my Lord, of numerous small points of irritation." Well, I got rather tired of this scientific jargon, and I said, "Really, if one could get it in fewer words it would be better.—Supposing I were to take one large grain of sand or one pea." Then my Brother Lush says, "The question is, is that the mark of a pea issue." That you see, is a question which might have been answered, yes or no, but the answer is, "Issues differ very much; some are made with one pea." Then I ask, "Is that the mark of a pea issue?—Not of one pea issue. Q. Is it or not?—Not of one; it is not a mark of one pea issue; it could be made with some substance that would irritate underneath, small substances." Well, I thought we were getting very wide of the mark, and I said, "We are dealing with the case of an issue kept open by a pea; the question for a simple answer, yes or no, is, whether in your judgment such a mark could have been caused by such an issue?—If I understand right, my Lord, that issue might have been made by more than one pea. I think I have read some of the evidence, my Lord, to that effect, and therefore it would depend entirely on the kind of substance that was used in keeping the issue open." Then my Brother Lush says again, "Suppose a pea was used, I want to know, in your opinion, whether this indicates to you that it had been a pea issue or not?—Not one pea. The LORD CHIEF JUSTICE: Suppose two peas?—That might have been quite possible. Q. What might be possible?—That you divide the ulceration, the suppuration, into a different state altogether." Then I say, "I thought that, to create an issue, by cautery or some other process, you got an open sore, and into a sore you inserted a pea or peas, as you desire to have a smaller or larger issue, and so by the constant presence of this foreign substance kept the wound open, and the ulceration constant; is not that what is meant by an issue?—Yes, but if you destroyed the whole of the skin by one identical point you would not then get these different islands or specks. Q. You do not destroy the skin by the pea, do you? You first destroy the skin, and, having destroyed it, you keep up ulceration, and prevent the healing by keeping a foreign substance, a pea or peas, there?—Quite so. Q. You do not destroy the skin by the pea?—If your ulceration goes on sufficiently long you will destroy the skin by the pea. Q. You have the wound in the first instance?

—Yes, but you must keep it open. Q. But you destroy the skin before you put the pea in?—Quite so. Q. What then does it signify whether you do it with one pea or two?—It makes a great deal of difference. Q. Why?—Because you would have different spots, you would still have little bridges or islands. Q. Not if you have the whole skin destroyed?—It would all depend on the manner in which you destroy it.” So it goes on, and so it goes off. It comes, I think, to this. What he says is, if you have more than one irritating substance, two or three irritating substances, you may get the sore into a greater state of irritation in one space than another, and you may have intervening spaces not destroyed; but, as I understand by the medical evidence, you first begin by destroying by caustic the whole skin, and then you keep your sore larger or smaller by the number of peas, or other substances of a similar character, that you introduce into the sore. I confess I do not see my way to following this gentleman’s notion, that, because you have two peas instead of one, you will have the appearance of these marks that exist in the defendant’s shoulder, or what he calls islands intervening between, instead of the whole cicatrix being one unbroken cicatrix. Mr. Holt and Mr. Haden, especially Mr. Haden, say that there is not such a mark as would be produced by an issue sore at all; that it may be the result of some other ulceration produced by some different cause, where the whole of the hard sore is not one unbroken, undivided sore, and where the whole skin does not get destroyed, but that where a mark is the result of an issue it would not be such a mark as that. Amongst these conflicting opinions you must form your own judgment. If the mark is the mark of an issue, then Roger had an issue, and it is a fact which must make very strongly in favour of the defendant that he can show such a mark. But we are in this difficulty, if there was such an issue in Roger, as undoubtedly there was, produced in this artificial manner, and kept open for two or three years, he would, I should suppose, have some recollection of it; but instead of having the recollection of an issue, the defendant’s statement is that he had a seton as distinguished from an issue; and there can be no confusion in his mind arising from the accidental application of the term “seton” to such an artificial sore created by an issue, because he goes farther, and distinctly describes the process which is that of a seton as distinguished from an issue, and of which he speaks as having a distinct recollection of it—as to which, if the evidence has satisfied you that Roger Tichborne had an issue, and not a seton, he must clearly be entirely wrong. I must leave you to find your way amidst this conflicting evidence. Mr. Haden and Mr. Holt are clearly of opinion that it is not the mark of an issue. Sir William Fergusson does not go the length of saying that it is, though, as far as I can make out his meaning, he does not quite go



the length of saying it is not, and the question is, whether the opinion and the reasoning of Dr. Wilson satisfy you against the authority of Mr. Haden and Mr. Holt that the mark is that of an issue? But the question has a wider significance even than that which is involved in its bearing on the question of identity. The defendant has the marks of an attempted seton, and by his own account believed that what Roger Tichborne had was a seton as distinguished from an issue. If, then, what Roger really had was an issue, how comes it that the marks of an attempted seton are to be found on the defendant's arm? It was suggested, indeed, that a seton might have been resorted to in the first instance, and afterwards an issue substituted for it before it had existed long enough to cause induration of the tissue. But the difficulty of adopting that suggestion is, that the defendant has no knowledge of the issue, with which Roger was tormented for three years, and speaks only of the seton, which, if resorted to at all, must have been resorted to at the outset only, and have been almost immediately abandoned. You must form your own judgment on this matter. If you should be of opinion that the defendant, aware of what a seton is, but unaware of the appearances it leaves, has, by passing a needle under his skin, produced what he thought would give the appearance of a seton, for the purpose of fraud, I need not say that this is calculated to shake most materially your confidence in the honesty of his case.

I now come to another important class of marks on the defendant. We know that Roger was frequently bled. According to Chatillon he was bled after the accident at Pornic. We know he was bled at Stonyhurst, because we had the books of Dr. Pinder, who went over to Stonyhurst and bled him. That he was bled at Waterford we know from Captain Polhill Turner. Whether, on the occasion of one or two of the illnesses which he had in Ireland, he was further bled we do not know; but we know that while there he was taken with one of those seizures such as he afterwards suffered from at Canterbury. We know from Colonel Bickerstaffe that at Canterbury he was taken with a violent seizure, apparently of an asthmatic character, and was thought to be in imminent danger of suffocation. It was deemed necessary to bleed him, and he was bled. The lancet was first applied to the arm in the usual way; the blood would not follow; the other arm was then tried, but no blood came; and then Dr. Moore, the surgeon, had recourse to the ankles, and he tried first the one ankle and then the other, making, of course, sufficiently deep incisions to draw blood, if the vein had been in a state to discharge it, and then, on this failing, he had recourse to the temporal artery. He said to Colonel Bickerstaffe, " Shall I open the artery?" it being rather a desperate thing to resort to, whereupon Colonel

Bickerstaffe said, "Open anything; if you cannot bleed him he is a lost man." Upon which the artery was opened. Colonel Bickerstaffe tells us that on this occasion Dr. Moore called his attention to the arm, and pointed out marks of punctures from former bleeding which were distinctly visible.

Now, Mr. Haden is of opinion, and he has very large experience, that the mark of a puncture in a vein made by a lancet is indelible. Mr. Barnard Holt does not go quite that length. He says that he believes that after a very long course of years, but only after a very long course of years, marks of bleeding may be obliterated. Sir William Fergusson agrees that the marks of bleeding generally are indelible. But Dr. Wilson has a different theory on the subject; he thinks that the marks of bleeding may be effaced; nay, he says he himself was bled three times while in the South Sea Islands, and that two of the marks have disappeared. So there again we have the medical authorities not altogether agreed; but they are agreed in this, that it takes a very long time indeed before the marks of venesection can be effaced, if they can ever be effaced; much longer than the period that has elapsed since Roger was last bled. This being so, are there any marks of venesection to be found on the defendant such as we should have expected to find on Roger if he were before us?

Mr. Holt says he examined for punctures of venesection most carefully. He says there is no trace to be found of any mark of bleeding on the right arm, or on the left. With regard to the ankles, he says a scar is to be found on the inner side of the right ankle, between the sole and the ankle, about an inch above the sole, but that it is very small and insignificant, and certainly not in the place where they usually bleed. There is no vein there for bleeding. He does not believe it to be the result of bleeding. On the left leg he says there is "a clean incised wound, an inch and a quarter in length, an inch and a half from the lower edge of the ankle bone, and two inches from the under part of the foot, slightly concave, the back part of the scar corresponding to the tendon Achillis, the large tendon at the back of the leg." That is all, so far as that mark is concerned. Besides that, he says "there was an induration, as if the result of an old ulceration, close to the back part of the ankle bone, presenting the appearance that ulcers have when they heal, situated to the back part of the ankle bone, and that was all that was found there. The LORD CHIEF JUSTICE: When you say the left ankle, are you speaking of the inner or the outer ankle?—The inner." Then he is examined as to the saphena vein, the vein resorted to when bleeding takes place at the ankle, the purpose of the examination being to show that the mark on the defendant's ankle is not on that vein, and therefore not where a surgeon would have attempted to bleed him. He produced a work of great authority for the purpose

of showing the origin and course of the saphena vein, which he says is the vein resorted to for the purpose of venesection, if you bleed in the foot. "It arises in a series of branches at the dorsum of the foot; it passes in front of the ankle and the inner side of the leg. Mr. HAWKINS: And does not pass under the ankle at all?—No; it has nothing to do with the back part of the ankle. You see some minute branches that go under the ankle." He then shows two or three of the large veins. "Two of them simply unite," he says, "and go to form the saphena vein, which runs up the inner side of the thigh." Those veins he showed you on the plates. I observed, "There are three well-defined veins which pass up the centre of the leg, and the other passes by the ankle?—Those are all the branches that form the saphena vein." Then he is asked to mark which of those branches of the vein is used for the purpose of venesection, and he is asked this question: "May either of those three branches be resorted to?—The other one is so small, the one that runs up, that the instep is the one usually taken." He admitted to one of you, gentlemen, that the course of the branches of the saphena vein is not always uniform. He says, "They alter to a certain extent. There are sometimes two, sometimes three; a portion of the one may be deficient, but they arise in numerous small branches in the front of the foot, and run up in front of the ankle. Q. So that it is impossible to say, until you have seen the subject, where the vein would actually go?—No; you may have an abnormal distribution, but it is always described in anatomical works as arising on the dorsum of the foot, and running up in front of the ankle bone." Then says Mr. Hawkins, "Having described how that saphena vein runs, and having indicated upon that the spot where it is usually opened, where bleeding of the foot is resorted to, will you now just direct your attention to the scars on the right and below the left ankle to which you refer?" I here interrupted him, "Having asked that question as to the course of those veins being sometimes abnormal, I will ask this question, how was that in the defendant in the leg you examined?—You cannot find the veins, the foot is so fat. You can find no veins there." Then Mr. Hawkins put this most pertinent question: "Were there any of those scars over the saphena vein, or any part of it?—No." That is a most pertinent and important question, because the saphena vein is the vein resorted to for the purpose of bleeding in the foot. Of course any marks of puncture found elsewhere than on the vein would not lead properly to the inference that there had been bleeding there. "Q. Were there any of those scars over the saphena vein, or any part of it?—No. Q. Was there any trace upon either ankle of a vein having been punctured?—No: You mean of a wound made for the purpose of opening a vein. Q. That is what I mean?—No. Q. I need



hardly ask, your attention was particularly directed to that subject, with a view of forming a decided judgment upon it?—Certainly.” Then I asked him this question: “How did the incision from which the scar had resulted appear to you to have been made—longitudinally or transversely?—It was somewhat semi-circular, or concave, slightly concave.” I asked him that question because I had reason to believe that in opening a vein they cut in a particular direction. “Q. In opening a vein how do you cut?—In the course of the vein. Q. Do you cut across?—No, straight along it; rather laterally, probably. Q. I do not quite understand that?—Obliquely. Q. You mean neither longitudinally nor transversely?—No, obliquely.” In cross-examination he is asked: “You have also said there was no sign of bleeding at either of the elbows?—Yes. Q. Are you quite sure there were not marks of venesection at the bend of the arm, though very indistinct?—Perfectly certain of it. Q. No marks whatever of bleeding?—No marks whatever, either distinct or indistinct. Q. Of bleeding at the bend of the elbow?—None. Q. On either elbow?—On either elbow. Q. Are you quite sure of that?—Perfectly positive of it.” Then Colonel Bickerstaffe having said that the temporal artery had been opened on the occasion of the illness at Canterbury, a question was asked as to whether Mr. Holt could say whether there was any mark of bleeding over the temporal artery of the defendant, and he said he had not examined that, and had had no opportunity of forming a judgment, but that if he were allowed he would look at the temporal artery. Dr. Kenealy did not refuse that challenge, and accordingly Mr. Holt stepped down from the witness-box and examined the temple of the defendant, and told us as the result of his inspection that there was no mark of bleeding, or of the temporal artery having been opened.

Mr. Haden gave similar evidence with regard to marks of venesection, and his attention was particularly directed to the bleeding at the ankles, and he was asked about the saphena vein, and as to the course which it pursues. He says, “It arises apparently as far as the small branches are visible, between the toes, and forms upon the upper portion of the foot, the front of the foot, and divides itself into two branches, an internal one which runs along the inner surface of the leg above the ankle until it joins another vein in the thigh, and an external one which runs over the outer ankle and joins another vein under the knee; the saphena vein is, in fact, a series of veins forming a sort of loop on the front of the foot.” He produced a model of the vein with all its ramifications, and showed by a red line the scar on the defendant’s foot, and then came this important question: “Is that a place where a surgeon would attempt bleeding?—No. Q. It could not be done there?—No surgeon would think of attempting it; there are no veins there to speak of. The LORD

CHIEF JUSTICE: That is where the mark is on the defendant's foot—Yes. Q. On the inner side?—On the inner side of the left ankle. Q. According to you, venesection would take place on the opposite side?—Well, rather upon the dorsum of the foot, as it is called. Q. But not on this side of the ankle?—No, it would be going out of your way to do it there.” Then Mr. Hawkins refers to the defendant's description of the mark, at page 874 of the cross-examination, where he says that he had “marks on both ankles, on the inside.” Then the witness is asked, “Does this red mark on the model represent the length of the scar?—Yes, as nearly as possible, and its curvature. The LORD CHIEF JUSTICE: In venesection, do you make as long an incision as that?—Oh, no.” Then he says “no surgeon would dream of bleeding there, there being no sufficient vein within two inches of the place where this scar appears.” Then he is asked, “Having carefully and minutely examined both ankles, was there upon either ankle the trace of a puncture from bleeding?—No. Q. Was there any scar or mark over any veins which would indicate that a vein had been tapped in the foot?—No.” Then he is asked as to the arms: “Now, with reference to the arms, I forget whether you observed any trace of bleeding in the arms?—No; we examined specially for that, and were not able to find any trace. The LORD CHIEF JUSTICE: You say you examined specially for marks of bleeding on the arms, but could not find any; but would it necessarily follow that if a person had been bled, there would be a mark of it afterwards?—I did not say that. The LORD CHIEF JUSTICE: No, you have not been asked that, but that is essential one way or the other. The WITNESS: Am I asked the question, my Lord? The LORD CHIEF JUSTICE: Yes, I think you ought to be?—My experience of bleeding marks is that they do not disappear. Mr. Holt's larger experience seemed to have led him to think that they might under certain circumstances. I never saw them disappear. The LORD CHIEF JUSTICE: Mr. Holt puts it that it would be, under any circumstances, thirty or forty years before the mark would disappear.—I never saw them disappear. The puncture is very deep for venesection. It must be a very rare occurrence.” My Brother Mellor interposes and observes, “He only puts it as an accident that might happen. I do not know that Mr. Holt suggested that in his experience he had known it; but he suggested that it might be possible, after such a length of time, for the marks under certain circumstances to disappear. Mr. HAWKINS: At all events I may take it that you say that in all your experience you never saw it happen?—That is the case. Q. Therefore it must be a very rare occurrence?—Very rare. Mr. JUSTICE MELLOR: After a long time?—As I never saw it I cannot say. Mr. HAWKINS: And of course it is a matter of much rarer occurrence for both punctures, one

on each arm, to disappear?—Unaccountable I should say. The LORD CHIEF JUSTICE: It must go quite through the true skin?—Yes; and whenever a certain portion of the skin has been once divided, the mark which results represents the destruction of that skin, and, therefore, the mark really remains; it may be invisible, but it is there. My experience is that it is always visible.” He was next asked with reference to the mark upon the ankle, whether he could imagine any surgical operation which would produce it. He could not. He is cross-examined. “You were asked whether or not there were any veins in this part of the foot. I think you said the veins there lay deep below the surface?—The veins on that side of the foot lie as deep within the surface of the leg as you can conceive possible. To get at them, you must cut through the whole tissue of the skin, a very tough fascia which comes underneath, a quantity of cellular tissue which comes under that, and when you get near to the skeleton of the foot, you will fall on the posterior tibial vein. It cannot be divided there at all. Mr. JUSTICE MELLOR: Was there ever any attempt, in your experience, made to bleed at that spot?—You would cut the artery, and could not select the vein. It would be a feat which would be a surgical impossibility.”

Sir William Fergusson, having been called for the defendant, was examined on this subject. On the right arm he found marks of vaccination, but not of venesection. Being asked whether he observed any mark about the elbow of the left arm, he answers, with the indecision to which I have before adverted, “I hardly remember anything so striking as that. Q. On the elbow itself, on the left elbow, did you observe any marks of venesection?—Well, very indistinctly; I could not swear to there being puncture marks of venesection there. Q. On the right elbow did you observe any marks?—I cannot be distinct at all on that; they did not appear distinct. The LORD CHIEF JUSTICE: But did they appear at all?—Well, I cannot say so, my Lord; they were very indistinct, at all events. Q. A mark may be distinct or indistinct; but was it there?—Well, it is a curious skin. If you examine the skin of this person, you could find scars in many directions and localities that he himself is not conscious of. I should say the marks of punctures from venesection are by no means distinct. Q. But are there any?—Well, I could not swear that there are. Mr. JUSTICE LUSH: That I understood you to say before, with reference to the right arm?—Yes, the right arm, and also the left. Q. And you cannot find marks on either?—No; that is what I say; I did not recognize them as marks of venesection.” Well, if Sir William Fergusson, with his knowledge, and evident disposition to do justice to the party for whom he was called, could not find marks of venesection,



it may well be doubted whether there were any. Then he is asked if there were any marks on the ankle. He answers, "There were various scars as of punctures, but not particularly distinct as regards that in particular. There is one scar below one of the ankles. Q. I am speaking of the right?—I could not say whether right or left, although I examined it last night—right and left go out of one's mind so readily; but on one of the ankles there is a distinct scar. The LORD CHIEF JUSTICE: Where?—Below the inner ankle. Q. But which ankle?—Well, I really could not say whether it is right or left. Q. We always understood it to be the left: I do not know whether it is so or not?—I would not undertake to say so just now. Q. I think, if my memory does not deceive me, the other surgeons spoke of it as being on the left." Then he points out the site of the mark on the model which Mr. Haden had produced: "That is the locality of the mark I allude to. Q. That you see is intended for the left foot?—That is the left. Q. The mark corresponds with what we see there, leaving the question of which foot?—Irrespective of that." Then my Brother Mellor asks, "Is that a puncture for bleeding?" and the witness answers, "It looks more like a cut; it implies something bigger than a puncture;" but immediately qualifying the answer just given, he adds, "There may have been one or more punctures there, and they may probably have been thrown into one cut. The LORD CHIEF JUSTICE: Do you mean to say any punctures except the scar of a cut?—They are not especially distinct, except just here and there; there are many scars about. Q. I understood that mark to be a continuous scar?—As if something had been drawn along. Q. Not a puncture, but a cut?—Exactly. Q. That is what I understood to be represented there? Is that what you find?—That is what I found in the foot, irrespective of which foot it was. The JURY: Is that a part where you would bleed?—No, it is not. Might I explain the reason?" Then I say, "Let us get the answer first. That is not the place where you would what?—Open a vein. Mr. McMAHON: Will you explain why?—Because it is exactly over the main artery of the foot in that locality, and that artery would be more likely to be cut than a vein to have yielded much blood, if the wound had been deep."—There he agrees with Mr. Haden.—"Q. What is the name of the vein that is there?—There really is no name to the vein there, except certain veins that accompany an artery; we call them the *venæ comites*." That did not give us much information, and I asked: "You would not cut one of those?—You could hardly cut one of those without cutting the artery too; but here," says Sir William, passing away from the place where the scar is, "there is another class altogether in front, that is the saphena vein, and these are the branches that run and form the saphena, and

there is a great variety in their shape, appearance, and numbers.

*Q.* That is hardly in two subjects alike?—Hardly the same. They are very numerous there.

*Mr. McMAHON:* Is it difficult to see them in the defendant's foot on account of his fatness?—Yes, there are none of his veins distinct anywhere on the surface.

*Q.* If a practitioner in haste were to attempt to cut there he would not be likely to draw blood?—No; he would meet with very few small veins in that locality until he went deep.

*The LORD CHIEF JUSTICE:* What I understood Sir William to say is that a practitioner would not cut there: your question assumes that he would.

*Mr. McMAHON:* I am asking whether or not if he did he would be likely to get blood?—Of course it is impossible to say, because it is quite within the bounds of possibility that a practitioner desirous of bringing blood might say, 'I do not mind if I open the main artery, the case is so urgent.'

*Mr. JUSTICE LUSH:* Then he would bring blood?—Then he would bring blood if the patient was alive.

*Q.* Where would you open the vein? In this locality?—Yes; I should choose a large vein or large branch somewhere in front of the inner ankle, say about where my fingers are now; it might be a little higher or lower.

*Q.* In one of the branches of the saphena?—In one of the branches of the saphena, which we call the internal saphena; you have no well-developed internal saphena here at all; you have a number of branches which would go and finally finish in the saphena up the leg. I do not think a practitioner would mind whether it was an inch or two higher up or down.

*Q.* So long as he got something connected with the saphena vein?—Yes, to yield the blood he wanted.

*Q.* But I understand you there is no branch of the saphena where that is?—No, of course, they would find their way. Such small veins would be there, but we do not look for large veins there in that locality.

*Q.* Not a vein for the purpose of venesection?—No.

*Mr. McMAHON:* If I understand, all the defendant's veins are some distance below the surface; none are superficial?—A very small distance. I do not know that they are so much below the surface as that they are very small.

*Q.* Not easily discovered?—Not easily discovered; and I should easily fancy that a person making a puncture or incision where he could observe a cluster of veins, might aim at cutting two or three for the purpose of getting some blood.

*Q.* Then, do I understand that any practitioner called in in haste might go to any spot?—He might be attracted to that: he might say, 'I see veins that will probably yield some blood, and I will make a puncture there.'

*The LORD CHIEF JUSTICE:* Do you mean even at that spot?—Even at that spot I can fancy it.

*Q.* I thought you said you would not?—It is a spot where judicious incision could not be made; yet under circumstances a person might see a cluster of veins there and might say, 'I can cut the veins in the skin and not wound the artery,' and I might do that.

*Q.* With the saphena vein just above ready for the purpose?—None of those are very attractive. In this foot of course they would not have gone here, that is certain; but it might happen in a given foot there was more appearance of vascularity here than there. *Q.* Did you find that appearance in his foot?—Well, if the case before, the appearance would be obliterated now; there is nothing very marked. *MR. JUSTICE LUSH:* Suppose a practitioner had done that; failing there, would he have gone to the proper spot?—He might, because there is really no proper spot in this instance—no large vein; and I can fancy a practitioner saying, ‘Here are some vessels, and I will make a puncture here,’ and then being disappointed. *Q.* Where?—Say here. He would see more vascularity here—not common—but he might in this instance make one or two punctures, and be disappointed, and say, ‘We must have blood,’ and make a deeper incision. *Q.* You are supposing the patient is as fat as the defendant is now?—No; it might happen in a lean person. *MR. JUSTICE MELLOR:* Have you ever known a puncture made there by any person?—Never to draw blood there; but it is a very rare operation in this country; more frequently practised abroad, though one is always taught it. *Q.* To draw blood?—Those veins in that foot.” Then comes a discussion as to whether a practitioner, educated abroad, would be more likely to bleed at that spot—a useless discussion, as there was no evidence whatever that Dr. Moore had been educated abroad. Reverting to the real question, I observed, “You must bear in mind that he tried both arms and could get no blood, and then had recourse to the foot.—Yes, my Lord, that is the only explanation I could give in my own mind, irrespective of the evidence, as to how such an incision could be made. The gentleman who made it must have been in despair, as it were, and did not mind what wound he made, if he could only draw blood; that is the theory I have in my mind about it.” Then a juror asks this pertinent question: “Would you have made an incision as large as that?—Well, that is not the legitimate kind of incision; but I think very possibly a person very anxious to draw blood might make an incision over a puncture, or might throw three into one, and so make an incision such as this represents, and that it might be done under what we might call desperate circumstances.” The great question, you see, is whether there is any mark of a puncture of this saphena vein, which is admitted to be the vein resorted to when bleeding takes place at the ankle, and Sir William Fergusson, if I understand him rightly, does not say there is.

On cross-examination, Mr. Hawkins asks: “By a surgeon ordinarily conversant with his profession there would be no bleeding on the ankle at all, would there, but on the top of the foot?—More on the top of the foot. *Q.* That is to say on the saphena vein?—Yes,



or on one of the branches running into it. *Q.* In the course of your experience you never knew anybody bleed on the foot other than on the saphena vein?—No; I should be astonished at his doing so; but—The LORD CHIEF JUSTICE: Or the branches leading to it; or some one of the branches leading to it—a big vein? Dr. KENEALY: You were going on to say something?—I think it must have been to the effect that a person bleeding there would just select the biggest he could see or feel. Mr. HAWKINS: That would be in the foot?—Yes. *Q.* In the front of the foot?—The ankle; where you were talking of; in the locality of the big vein. The LORD CHIEF JUSTICE: Do you include in that the place where the incision is made?—No; I think I have said that is an unusual place. *Q.* I think I understood the question to be whether you had ever known the vein opened there?—I cannot say I have. Mr. HAWKINS: There is no vein there that any one conversant with his profession would dream of attempting to open?—No; you will bear in mind what I have said. I think I stated in the fore part of the day it was just within the bounds of possibility that any one wishing to draw blood there might say, ‘Here is a cluster of veins; I shall do it here.’ They might have done it, and one would not object to do it. It is not a common thing. *Q.* In the whole course of your experience did you ever know a man brought up in the profession, whether ignorant of his profession or not, attempt to bleed in that locality?—No, I have stated that to you. The LORD CHIEF JUSTICE: Would he not in the first instance resort to the branches of the saphena vein?—He would have punctured any of those. Mr. HAWKINS: There would have been the mark of the puncture on the vein?—In all probability a white speck. *Q.* A white speck?—Most likely. *Q.* And the patient would have carried it to his grave?—Very likely. *Q.* Now, what you saw, whether in the inner part of the right or inner part of the left ankle, on the spot where you have pointed, would that be well described as a long incision?—Yes, for that locality, a long incision. *Q.* Like a cut, either with a sharp knife or lancet?—More like a cut than a puncture; you could not apply the term puncture to that. *Q.* It presents every appearance of a clear incised wound?—Yes.”

I inquired as to the other ankle. “Did you find any mark on the other ankle?—Not equivalent to this. *Q.* Any mark of venesection?—No; I could not see anything to be positive about. *Q.* One way or the other?—One way or the other, my Lord.” That is really what it comes to, after this long dissertation on the saphena and its branches. What we wanted to know was whether or not there was any mark of the puncture of a lancet on either of the defendant’s ankles, and it would have been satisfactory to have had the opinion of so eminent an authority to guide us; but we could

get nothing positive ; Sir William does not go the length of saying there are marks, but then he does not say there are not. We are left in uncertainty, though perhaps you may have a shrewd suspicion which way Sir William's opinion inclines. Then he was asked by me whether he could form any judgment of how the two little white specks on defendant's thumbs, to which his attention had only been called the previous night, were produced? and he answered, "No more than he had innumerable white specks on his body in all directions. They abound on his fingers and all parts."

But then comes a gentleman who certainly cannot be complained of for not speaking positively. I refer to Dr. Wilson, who first sought the defendant with the view of making his head the subject of phrenological study—he being a believer in that science—and who came to give evidence as a volunteer, not having been subpoenaed, or called upon to do so. Dr. Wilson differs from the other surgeons as to the obliteration of the marks of bleeding, and he told us, when asked whether the marks of venesection ever disappeared, that he had been bled when in the South Sea Islands in three places, and two of his marks had disappeared. But Dr. Wilson succeeds, according to his account, in doing what even Sir William Fergusson had failed to do. He finds marks of lancet punctures both on the arms and legs, and also, what is more important still, in the temporal artery. He is asked, "Have you examined the right temple?—I have. Q. Have you examined it with reference to the evidence that was given by Colonel Bickerstaffe as to lancet punctures there?—I have. Q. Have you discovered any trace of lancet punctures on the right temple?—There are traces of lancet punctures. Q. Have you examined that part particularly to which Colonel Bickerstaffe referred, the soft part, on the outside of the socket?—I have." Now, this gentleman appears to have made this discovery by a process apparently unknown to the other surgeons. They expect that venesection will leave its mark visible to the eye; this gentleman assumes that, though invisible to the eye, it may be perceptible to the touch. He is asked: "How did you ascertain the existence of those marks?—By compressing the temple firmly with the soft part of the thumb, so as to empty the tissues as much as I could, when I obtained a clearer view of the surface. With regard to any marks, they are exceedingly indistinct, and they are more perceptible to detect to my touch, they are more perceptible to feeling than they are to vision. Q. What is there that renders them perceptible to touch?—By rotating gently the loose skin over the vessel there is an impression conveyed to the finger like a small cicatrix underneath. Q. How does it feel to the touch?—It feels not so large as a cord, but like a thread, and upon putting the skin upon the stretch, and getting the defendant into certain lights, so that the light may fall upon it, then

you can just see the mark or an incision. Q. You mean after you have been pressing it?—After you have been pressing it. Q. When was this examination made?—I have made it three times. I made it the very first time I saw him when I was looking at him. Q. The first day?—The first day. Q. And did you say so at that time?—I did. Q. What could you see when you got him into this light?—The light, when thrown upon him in a particular direction, caused a glistening of that particular part which it does not show upon any other part. Mr. JUSTICE MELLOR: Do you mean without the aid of a microscope?—Without the aid of a microscope, a strong glass.” Then Dr. Kenealy reminds us that Sir William Fergusson spoke about white specks which he found all over the defendant’s person, and I say, “Yes, he said they were all over him. Dr. KENEALY: But white specks indicate that, I suppose. The LORD CHIEF JUSTICE: Glistening? Dr. KENEALY: Yes, my Lord. Q. Did you hear or read what Sir William Fergusson said about white specks?—I was not here when he said that. The LORD CHIEF JUSTICE: Did you find the white specks on his body which Sir William Fergusson has spoken of?—I saw some; they are of a very different form altogether. Dr. KENEALY: Does that impression to the touch that you speak of often remain when a surface cicatrix has become obliterated?—Yes, it will. That impression will be conveyed to the touch when the surface cicatrix is not very visible—when it is almost obliterated. Dr. KENEALY: Can you account for the apparent difficulty you had in discovering those?—Yes, the extreme fat of the patient and the very small vessels. The LORD CHIEF JUSTICE: Do you mean from the extreme fat over this part here?—At the outer margin, the outer corner of the temple, just by the eye, there.”—One does not, you know, expect to find a very great mass of fat there, so I asked him: “But will fat obliterate the scar occasioned by opening the artery so as to draw blood?—Where there is a large deposit of fat. Q. Is there such a deposit of fat there as to account for the obliteration of a mark produced by opening the artery?—It would not account for the obliteration, but the difficulty of discovering it. Q. But, practically, obliteration to the eyesight I am speaking of?—Yes. Q. You must cut deep, must not you, to get at the artery?—It all depends on how the artery is situated. Q. Take that artery?—The temporal artery is to be felt very superficially, pulsating under the finger. Q. Is that where they cut?—That is not the place where the temporal artery is generally cut. Q. Where then?—More under the hair, just where it runs under the hair. Q. Have you examined it there?—I have. Q. Did you find any mark?—There is. There are two. Q. There are two? you have not told us that.—Because I am following the counsel examining. I am going piecemeal. Q. They would not open an artery in two



places?—I do not know what a man would do when he had great anxiety to get blood from a patient; I have seen three or four punctures made at a time. *Q.* In an artery?—Not in an artery. *Q.* We are speaking of an artery?—Certainly not. *Dr. KENEALY:* I was asking how you accounted for the difficulty of ascertaining those marks, and you were going on to say something about fat; is there fat about the place?—There is a great deal of fat. *Q.* Does that increase the difficulty of discovering marks of that kind?—Certainly it does. *Q.* As I understand you, above that place there is also some trace of a lancet puncture? *The LORD CHIEF JUSTICE:* About which place? *Dr. KENEALY:* The one we have been speaking of. *The WITNESS:* The skin of the temple is exceedingly loose, and when I have looked at the defendant making these peculiar movements of raising his eyebrows frequently, it thrust the whole of the skin into a wrinkle, and the skin seems to me here, at the temple, to be exceedingly loose. When that skin is made tense by drawing with the finger so, as a surgeon would do when he is going to transfix or to open a vessel, that cut over the eyebrow can be brought forward to correspond with the spot indicated by Colonel Bickerstaffe's description of the spot in which he says he was bled. I tested that by seeing whether that cut would come nearer. *The LORD CHIEF JUSTICE:* What cut are you speaking of?—The cut at the external angle of the eye. *Q.* Do you mean the artery?—The artery. *Q.* I did not understand you to say there was a cut; I thought you said there was a mere mark?—I say it might have resulted from a cut or blow; but it might have been a cut at the external portion of it, that portion which I say extends from one-eighth to two-eighths of an inch towards the temple. I can draw it with my hand to make the skin tense (as I should do if bleeding) to correspond with the spot described by Colonel Bickerstaffe." So that he draws the skin right away from the eyebrow, forces the scar on the brow to the place where he supposed the temporal artery was opened, and so brings it to the point described by Colonel Bickerstaffe—and I could not help observing we had heard that cut ascribed to a very different cause—that is the cut the defendant has spoken of as having been produced in a very different way. My Brother Lush asks, "Do I understand you now to say the cut you observed over the eyebrow?—Yes, the external corner, my Lord. *Q.* Do you say that is the mark of the bleeding in the temple?—The portion of it which extends towards the temple, from one-eighth to two-eighths of an inch, when this loose skin is drawn so as to fix it. *Q.* So I understand; but are we to infer from that that it is your opinion that that mark, or that part of it, was caused by the lancet?"—Here we should have been glad to have had an answer yes or no, but he says, "It is quite possible, my Lord. *The LORD CHIEF JUSTICE:* But I thought it was one con-

tinuous cut. They would not begin to lance over the eye?—No.

*Q.* This is continuous, and it is not one that you can ascribe one part of to one cause, and one part to another cause?—It does seem to me as if it were like two.

*Q.* This is the first time you have told us so. We have always heard of it as one cut?—Examining him very minutely further along over the centre of the eyebrow, there seems to be a remnant of a mark there, but exceedingly indistinct.

*Q.* But do you mean two cuts?—There seemed to be two cuts.

**MR. JUSTICE MELLOR:** And that is besides the marks you have seen under the hair?—Besides the marks I have seen under the hair.” Hereupon I put this question to him, which I deemed an important one: “You infer that the artery was opened in two places?—I infer that more than one puncture was made there, and I also account for this elongation by the perpetual action he has got of raising his eyebrows. That would tend to elongate that scar, and even to draw further back from the temple an incision that might have been made there.

**MR. JUSTICE LUSH:** I still want to know whether I understand you. Is it your opinion that any portion of that scar, which you observe in the eyebrow, is attributable to the lancet, when his temple was bled?” Again we have the answer: “It is quite possible, my Lord.” Then I say, “Everything is possible; is it your opinion?—Well, it is so stated.

**MR. JUSTICE LUSH:** Is it your opinion?—It is so stated, and the end looks to me as if there had been.

*Q.* Is it your opinion?—It is my opinion.” Now I was struck by what appeared to me a very remarkable circumstance. Sir William Fergusson had been examined the day before, and this gentleman, at the very time that Sir William was under examination, had made, as he represents, the discovery, that by this process of manipulating the parts by what he calls rotating the skin, he could find something perceptible to the touch which was not visible to the eye, and found, he tells us, by this process a mark on the temporal artery, which “possibly” might have been the mark of a lancet. Sir William, certainly not indisposed to take any trouble to establish, if possible, the identity of the defendant, if he could legitimately bring his mind to do so, could have told us in half-a-second whether those were marks of lancet punctures made in the artery; and this gentleman, though he knew Sir William was there, and might have asked that while he was examining the defendant Sir William Fergusson should see the operation, and form a judgment for himself, whether there were any punctures—the last examination by Dr. Wilson having been made while the court had adjourned for luncheon, and, therefore, while Sir William Fergusson might have been called in to witness the operation—never suggested it to him; neither did the learned counsel, when he had Sir William in the box, having the same opportunity that Mr. Holt had had of

examining that temporal artery, having one of the first—I must not say the first, because it would be invidious towards others—but having one of the first surgeons in the world in that witness-box, and the defendant sitting below him—say to Sir William, “Come down and look at the defendant’s temple, and see whether you find the mark of venesection there.” He neither asks Sir William to do that, nor was there a suggestion made that Sir William should have the opportunity of seeing this process of Dr. Wilson, and of judging whether the results do come from it that Dr. Wilson has told us of.

Then the witness was asked as to the elbow. “Have you found any traces of bleeding in the left elbow?—Yes; there are three lancet marks as if for bleeding, and one very distinct one over the vein. Mr. JUSTICE LUSH: One of the three?—One of the three, my Lord, above the bend of the elbow, that being a prominent vein; and these veins are extremely difficult to find; nothing would bring them into view but putting a ligature, as used in bleeding. By the arrest of the superficial circulation, on the return of the blood, of course I get my vessel filled, and then, by rotating, I can feel it more distinctly.

Q. But seeing it? When you have bled, does not the scar remain, if not the whole of your life, at all events for years, visible to the naked eye at any moment you like?—For some time it does.

Q. You say it disappears?—I have only given you an illustration in my own person; I can say nothing more; I have never watched that. Q. But can you by sight discover this distinct mark of bleeding?—That mark I can, because it is on a very superficial vein.

Q. You do see it then?—I do. Q. The others you do not?—Until you have tied up the arm as if for bleeding. If you were to examine that arm by a superficial glance, you would not see them at all, but if you take the precaution to put on a ligature so as to arrest the superficial circulation through these veins, taking care not to make it too tight, so as to allow the arterial circulation to go on, you will fill these vessels upon its return, and then the thing comes into view.

Q. That is the way you look for a mark?—That is the way I have done in this instance, having such a fat subject to deal with. Mr.

JUSTICE LUSH: I do not understand you now. Am I to understand that neither of them is perceptible to the eye?—One of them upon the slightest pressure. The LORD CHIEF JUSTICE: But without pressure can you see it?—Yes, you can. Q. I want to see whether I can reconcile your statement with that of the other gentlemen who have not?—You can see that. Q. And they ought to as well?—

They ought; it is above the bend of the elbow. Mr. JUSTICE LUSH: You say it is a mark from the lancet?—Just so, my Lord.” Then Dr. Kenealy takes him to the arm. “I must take you back to the right arm again. Mr. Barnard Holt says, ‘I found two small vaccination marks on the right arm, in the usual place; just below the



shoulder. I found no punctures of venesection, though I examined them most carefully. There was no trace to be found of any bleeding mark at the bend of the elbow.' Have you examined the right arm of this defendant?—I have. *Q.* Do you agree that there were no punctures of venesection—no trace of bleeding marks whatever?—If you look at the arm in the ordinary way of looking at the arm, you will not see anything; but if you adopt the precaution of putting on a ligature, as if you were about to bleed, the vein is stopped; then these incisions or punctures come into view, and very distinctly. *Q.* Did you discover them also by touch?—By touch. They become more distinct by touch."

In the same way Dr. Wilson speaks with regard to the ankles. He finds on the ankles marks of lancet punctures, of which Mr. Holt and Mr. Haden denied the existence, and which Sir William Fergusson had not been able to discover. To be sure this was by this process of Dr. Wilson's own—a specific, I presume—and it may be that Sir William is not acquainted with this process. The result as to the ankles is very striking. "*Q.* Did you examine either of his legs?—I examined them both. *Q.* Did you find any mark upon either?—On both legs there are puncture marks. *Q.* Can you give me any observation you made; begin with his right leg?—I adopted the same course there. I applied a ligature, about three inches above the ankle. *Q.* What sort of a ligature was this you applied?—An ordinary bandage. *Q.* Was that the one you used as well to the head?—No, I used a tourniquet to the head. *Q.* Did that inflict pain upon the defendant?—It did. That rendered all the veins turgid; but they are exceedingly small. That enabled me to discover where those punctures had been made. *Q.* You did discover some punctures there?—I did. *Q.* How many?"—Now I beg your attention to this: "It is extremely difficult to say; I could state distinctly three. Dr. KENEALY: Three punctures?—Three punctures. These I could speak to. The skin is in such a diseased state with varicose veins that it is very difficult to see things distinctly. The LORD CHIEF JUSTICE: You say you saw three punctures distinctly?—I did, my Lord. Mr. JUSTICE LUSH: Where are these punctures?—Over the one ankle. *Q.* By that I suppose you mean the projecting bone over it?—Just round that. The LORD CHIEF JUSTICE: Round is one thing and over is another. Do tell us which you mean?—It is round it. *Q.* There would be some above and some below?—They encircled the bone, as it were. *Q.* How many above and how many below?—There are two which are higher than the other one, which is a little lower. *Q.* Are the two above or below?—Above the ankle. Mr. JUSTICE LUSH: And the third below?—And the third below. Mr. JUSTICE MELLOR: That is on the ankle of the right leg?—Yes, my Lord." Then

Dr. Kenealy says, " Now I come to the left foot ; what do you say about that ?—I find the same marks upon the left foot. The LORD CHIEF JUSTICE: How many ?—I should be very sorry to say positively how many I did find there. Q. Give us some idea ?—I could see three." Then he looks at the model, and is asked whereabouts he found the three marks of puncture on the left foot, and he says, " Two were upon the inner side, a little above the ankle, and the third upon the external ankle. THE LORD CHIEF JUSTICE: And you think there have been three punctures on one ankle and three on the other ?—Yes, my Lord. Q. All from the lancet ?—All from the lancet ; that is my impression, from the examination I have made. Q. Not from what has been told you ?—No, not told me ; my own independent examination. THE LORD CHIEF JUSTICE: You suppose the operator would have given him six digs with a lancet ? I should say so." So that we have six lancet punctures on the two ankles, if they are punctures of a lancet at all. He speaks of them as being all of the same character, and he finds three on each ankle. So that as this witness states that he found six marks, the surgeon must have given three digs on the one ankle, and, finding nothing came of that, three digs on the other ; and unless we had reason to believe that venesection of the foot had been resorted to at some other time, this unfortunate defendant, represented to be Roger, underwent six punctures from the lancet on this occasion as well.

Now, here again I cannot help saying with reference to these marks of venesection in the arms and legs, as well as in the temporal artery, that if Sir William Fergusson had failed to discover any, as he confessed that he did, and Dr. Wilson has succeeded in finding them by this particular process, I think it was a great pity that Sir William was not asked to see, with regard, not only to the temporal artery, but with regard to the other places where bleeding had been resorted to in Roger, whether there were on the defendant's arms and feet the punctures which Dr. Wilson, by this peculiar process, had succeeded in discovering. But as regards the marks on the ankles a formidable difficulty presents itself. Dr. Wilson finds the marks of six punctures. Can you believe that there were three attempts to bleed on each of Roger's feet ? I thought it very essential that that matter should be cleared up, and therefore desired that Colonel Bickerstaffe would be so good as to attend again. Colonel Bickerstaffe had witnessed the whole operation. He saw the lancet resorted to on the arms with no effect ; he saw the attempts made to bleed on the ankle equally without effect. Then comes the question, the decisive question : " Can you, Colonel Bickerstaffe, having witnessed the operation, take upon yourself to say whether there was, or was not, more than one incision on each ankle on the occasion of this illness at Canterbury ?" And Colonel Bickerstaffe gives us the

most distinct and positive answer, that he saw the surgeon try both arms, and then saw him try one ankle, and when that failed try the other. He then turned round to him, and said, " Shall I proceed to open the temporal artery ? " " Open anything," Colonel Bickerstaffe exclaims ; and he proceeded to do so, not in two places, but in one. The matter being so important, I had better give you the exact questions and answers. " The LORD CHIEF JUSTICE : Were you present when Roger Tichborne was taken ill at Canterbury ?—I was, my Lord. Q. And you saw Dr. Moore, the surgeon, bleed him ?—I did. Q. He bled him at the ankle—or attempted to ?—He did. Q. Did he open a vein in each ankle ?—In each ankle. Q. You were there and saw it. Did he open more than one vein in each ankle ?—He did not. He just put his lancet in each ankle, and just did it in that manner (describing). Just made one. Q. Are you sure ? Is your memory quite certain about the matter, so as to be able to say for certain he did not make more than one puncture on each ankle with the lancet ?—I am perfectly positive he did not. I have a perfect remembrance of everything that took place on that occasion." But Dr. Wilson finds on the temple two traces of the lancet, one outside the hair, and the other inside the hair, on the prolongation of the artery, and would give you to understand there were two attempts to open the artery. Colonel Bickerstaffe, on the other hand, says that as soon as the lancet was put into the temporal artery blood flowed immediately—black blood he calls it. Probably it appeared to him blacker than arterial blood generally is. There may have been some suspension of circulation ; the man could not breathe, and if the circulation was impeded that might make the blood appear blacker than it otherwise would be. So that if Colonel Bickerstaffe is right, there having been but one puncture on the temporal artery, and but one on each ankle, five, at least, out of the eight punctures discovered by Dr. Wilson must have been imaginary, or are to be ascribed to some other cause. Under these circumstances, looking at the very peculiar character of Dr. Wilson's evidence, and at his not having sought any corroboration at the hands of the very eminent authority by whom he might have been supported if his view was correct, you must judge whether that evidence outweighs the positive evidence of Mr. Holt and Mr. Haden, and the almost conclusive evidence of Sir William Fergusson, who will not undertake to say there was any sign of venesection at all. I think you will agree with me that this part of the inquiry is of paramount importance, owing to the fact of Roger Tichborne having been bled so frequently. If the surgeons are right in saying that, at all events, it is only after a very long series of years, a lifetime almost, something like thirty or forty years, that the marks of venesection disappear, and if there are no such marks to be found on the defen-



dant, it is a strong circumstance against him, unless, indeed, it can possibly be accounted for by his having become so exceedingly stout. Mr. Holt and Mr. Haden do not think that becoming very fat would have any effect in obliterating marks of that kind, because when the fat arises it is under the skin, and where the skin has been destroyed the marks will still remain on the surface as before. If you come to the conclusion that, knowing how often Roger was bled, there are no bleeding marks on the defendant, of course it is a very strong fact against him.

But the question as to the bleeding at the ankles has also, like the question of the seton, a wider significance than at first sight appears, if, as has been suggested, the evidence should lead you to the conclusion that the punctures have been made there by the defendant himself, for the purpose of making you believe that he had been bled there. His account is certainly a somewhat singular one. He says he had forgotten the fact of his having been bled at the ankles when taken ill at Canterbury; but that on McCann first coming to visit him in 1867, McCann recalled the circumstance to his recollection, and that he then offered to show his feet to McCann, but McCann declined to look at them, and never saw the marks till just before giving his evidence on the trial. The defendant's account is: "My mother was in the room when McCann came in, and after a few minutes' conversation, McCann said, 'Nothing can be easier than for you to prove your identity, because you have the mark where you were bled in the ankle, and if you are Roger Tichborne, of course you must have that,' and then it occurred to me. Q. Upon that what was said or done?—I said, 'Do you mean the mark where I was bled at Canterbury?' and he said, 'Yes.' I said, 'The mark must be there now,' and I offered to let him look, but he declined doing it at such a time." He goes on to say, that shortly before the trial, which you know was in 1871, McCann came in when they were attending to his feet, and that McCann then saw the mark. It certainly seems strange that McCann should have declined the spontaneous offer of the defendant to exhibit the mark, which, if the result of the bleeding, constituted so cogent a proof of identity. Equally so that, afterwards, during the many months McCann was an inmate of his house, the defendant should never have insisted on his looking at the marks, if really existing. That McCann may have mentioned the bleeding at the ankles is very likely. Whether that may have led to any indirect practice on the part of the defendant you must judge. If Dr. Wilson is right, and there are genuine marks of bleeding to be found about the defendant's ankles, the fact affords strong evidence of identity. But here we are involved in this singular difficulty. The marks found by Dr. Wilson are not marks visible to the eye, but marks which can only be brought into sight by his particular

process. But the marks which the defendant says McCann saw before the trial, and which the defendant exhibited to the surgeons as marks resulting from his having been bled, are marks which are to be seen on inspection. Dr. Wilson cannot say these are the marks of venesection, and he therefore goes to work to discover others. If, discarding Dr. Wilson's six punctures, you adopt the view of Mr. Holt and Mr. Haden that the visible marks are not the marks of punctures made for the purpose of bleeding, and are not in the place where a surgeon would puncture for that purpose, then, inasmuch as the defendant does not account for these marks in any other way, but exhibits them as marks of bleeding, and as proof of his having been bled at the ankles, an inference may arise that the lancet has been applied for the purpose of simulating the appearance of venesection. The fact that the punctures had not been made where a surgeon would apply the lancet, or where an available vein could be found, would tend to confirm the view that the punctures had been made by an unskilled hand. Here, again, I must repeat the observation that if you should come to the conclusion that any fraudulent contrivance has been resorted to, it must carry with it the consequences which follow from detected fraud.

As regards the bleeding on the temporal artery, of the mark of which Dr. Wilson asserts the discovery by his especial process, this further observation presents itself. The opening of an artery is a very serious affair. Especial care has to be taken to prevent the wound opening again, in which case the patient may bleed to death. It is a thing which a man, if it had happened to him, would not be at all likely to forget as long as he lived. But of this operation the defendant has never exhibited the slightest knowledge. When reminded by McCann of having been bled at the ankles, he makes no mention of the bleeding at the ankles having been followed by the opening of the artery. No reference whatever is made to the fact till it had been stated in evidence by Colonel Bickerstaffe. When the surgeons were examining the defendant for marks of bleeding with a view to the former trial, he makes no reference to any mark to be found over the temporal artery. Could Roger Tichborne have forgotten such an occasion of having been bled as the opening of the temporal artery? especially as Colonel Bickerstaffe expressly tells us that, referring to his having sanctioned the opening of the artery, Tichborne used afterwards often to say to him "You did save my life!"

Besides the question of the marks of bleeding, we have heard about the mark on the back of the defendant's head. The defendant has a mark there, and he ascribes it to the fall which occurred when he was bathing at Pornic. Sir William Fergusson certainly says there must have been contusion, and that this has the appearance of an incised wound accompanied by contusion at the time of the accident.

Mr. Holt speaks of it as purely superficial—an incised wound. It may be that it was the result of the fall at Pornic. The strange thing is that the defendant knew so little originally about that fall. That, however, is not conclusive, and this scar may have resulted from that fall; but it may also have arisen from some other accident; and there is a piece of evidence which I own struck me a good deal, and that is the fact spoken to by John Hayward, one of the witnesses for the defence on the Orton case, who professed to have known Arthur Orton very intimately, and who says that on an occasion when as a boy he was out at play, another boy hurled an oyster-shell at him through the air, and it made an oblique cut on the back of the head, drawing blood. Now you know an oyster-shell is a very sharp thing, and when, whirled, as a boy sometimes whirls it, with considerable power, it comes cutting through the air, if in coming down it struck a person's head, it would very likely make an oblique cut, an incised wound. If that was so, can we thus account for this incised scar of which the surgeon speaks? If not, may it have occurred from some other accident? Should we be justified in connecting it necessarily with the accident at Pornic? Chatillon says no cut at all resulted from the accident at Pornic; that there was a deep depression on the head, but it afterwards recovered its former position; that Roger did not fall on an angular or cutting surface of the rock; that there was no wound which would cause any destruction of the skin at all.

The only other mark which remains of any importance is the mark on the defendant's arm. That you have seen. What that arises from no one seems able to say with distinctness, because it may have arisen from a variety of causes. It may have been the result of a boil, a scald, or a burn, or it may be that the skin was purposely destroyed. We cannot tell. All the defendant can say about it is that he cannot account for it, except on the supposition that when he broke his arm in Australia, a bandage was tied too tight about the arm when the parts were set in their proper position, and that that may have caused some swelling and suppuration, or I know not what. That is the only way he can account for it. He has no recollection of it prior to that. He does not positively say it arose then. Even as to that he speaks very vaguely. Sir William Fergusson says he told him "he fancied his arm had been broken," or "had a recollection of his arm having been broken," when he was in the bush, and that "possibly it might have been caused by tight bandaging at that time." Q. "But nothing more definite than that? that that possibly might have happened?—Yes: in fact, he told me again and again he could not account for it." Sir William Fergusson says the scar may have been so caused. "Examples of this kind," he says, "are common in surgery. A bandage is put on too tight, or,



perhaps, put on rightly at first, but the parts swell and come up across the bandage, and then the pressure of the bandage, or, more correctly speaking, the part coming up against the bandage produces ulceration or the sloughing of the particular part." But, inasmuch as there must have been some destruction of the skin to have caused such a scar, it certainly is a remarkable thing, unless it took place in very early youth or childhood, that the defendant cannot give a more precise account of how it came there—whether from a scald or burn, or wound, or what other specific cause—and can only suggest, as a mere possibility, that it may have arisen from a tight bandage. It may have arisen, according to Sir William Fergusson, from a burn or a scald, or a cautery, or from tight bandaging; but, whatever its origin, it must have been attended with great pain; and one would therefore suppose that unless it was caused in early childhood, the defendant would have had some recollection of how it arose, and if he had had it from childhood, would have accounted by that for his not knowing what had been its origin. But then there comes forward a man—the witness Lewis—who says, "I did it by running a sharp piece of iron at the end of a stick into his arm, when we were out one night on Tichborne Down, upon which I ran to Alresford, leaving him on the down, and got some diachylon plaister and applied to it." But can that have caused this scar? Sir William Fergusson was asked about this. "Suppose what we were told the other day had happened, that a man, with a bit of iron at the end of a walking-stock, made a thrust at it, would that have caused it?" The answer, if Sir William Fergusson had simply answered the question, would have been "No;" but Sir William ingeniously suggests a possible state of circumstances in which the scar might have been so produced. "Supposing," he says, "a pointed iron at the end of a stick, it would hardly leave so large a cicatrix; but if struck with great force, and the broad end of the stick, just above the small portion of metal at the end, were forcibly thrust against the skin, it is just possible that it might so have destroyed the skin. These points are usually a quarter or half an inch long, and, supposing it had penetrated, and the broad end of the ferrule had come against the skin with great force, so as to damage the skin, there might be a sloughing process there. Q. Then you would have a regular sloughing process?—Yes. Q. You could not have cured it with a bit of diachylon?—No." Of course not. Such a wound must of necessity produce a state of ulceration or inflammation of the part, such as to make it necessary to resort to medical treatment. In the first place, a man would not have stayed on Tichborne Down while the man who had inflicted the wound went all the way to Alresford to get a piece of diachylon plaister; and, in the second, a mere piece of plaister would not have

sufficed to cure the wound that had been thus caused. But that which gives the most complete and conclusive answer to the evidence of this man Lewis, and shows this story to be a fabrication, is that, if there had been such a wound and such a scar resulting from it, the defendant, if Tichborne, must have remembered the wound, must have known of the scar as caused by it, and could at once have accounted for it by referring to the wound as its origin, whereas he knows nothing about it, except that it may have been caused by a tight bandage. A man could not well have, first such a wound on his arm, and then a scar produced by it, existing for many years, and not be aware of it. Is then, in your opinion, this scar accounted for? If not, is it to be attributed to the cause to which the prosecution ascribed it, namely, the intentional removal or destruction of the skin in order to get rid of the mark which was there, which mark it would have been inconvenient for the defendant to have had to show? That is the way it is put by the prosecution, and you have to deal with it. That is a matter which I leave you to judge of. So much, gentlemen, for the medical evidence.

I now come to a part of the case which is of the last and most undoubted importance ; because if you take the view submitted to you by the prosecution, it is final and conclusive—I allude to the tattoo marks. If the prosecution is right on this point the defendant is not Roger Tichborne. The defendant has no mark of tattooing about him, and has sworn most positively that he never was tattooed, The occasion of his doing so presented itself on the former trial with reference to that very mark of which I was last speaking. It was suggested that that was a scar caused by the obliteration of a tattoo mark which had exhibited the letters “ A. O. ;” concurring herein with the evidence of Doña Hayley, that Arthur Orton had his initials tattooed on the arm, which evidence, if believed, and followed by signs of the destruction of the skin on the corresponding part of the defendant’s arm, would lead to the conclusion that the defendant was Arthur Orton. The defendant was pressed with that, and he swore positively that that had not been the seat of a tattoo mark ; and, moreover, that he had never been tattooed on any part of his body. At that time the question of Roger being tattooed had not been brought forward. That this may be quite clear I will read the questions to and answers of the defendant. The Solicitor-General asks him, “ Do I understand you to say—correct me if I am wrong—that you have at this moment no tattoo marks upon you at all ?—None, to my knowledge. Q. To your knowledge. Well, you say there are no tattoo marks, to your knowledge ?—No. Q. Well, what do you mean by that? Can you have tattoo marks without knowing it ?—No, I do not mean that. Q. What ?—No, I am

speaking now——**LORD CHIEF JUSTICE BOVILL**: I do not hear what you say?—I have none. I have been examined by three or four medical men three or four different times, and there is nothing of the kind to be seen. **THE SOLICITOR-GENERAL**: Well, but you do not want medical men to tell you that. If you have got tattoo marks, you have got them; and not all the doctors in the world can prevent you having them; and if you have not got them, you have not got them, and not all the doctors in the world can make you have them. **MR. SERJT. BALLANTINE**: I do not know that. **THE SOLICITOR-GENERAL**: Without putting them on. But have you at this instant of time, five minutes past three, on the 5th of June, any tattoo marks?—None whatever.” At all events we may take it as quite clear that the defendant never was tattooed in the way the evidence for the prosecution represents Roger Tichborne as tattooed; and, consequently, if Roger was so tattooed, he cannot be Roger Tichborne.

Now, a witness comes forward, who, if his evidence is to be believed, gives conclusive evidence on the point—of course, I mean Lord Bellew. Lord Bellew was a brother philosopher with Roger at Stonyhurst, and he says Roger drew his attention to some existing tattoo marks upon his arm, and asked him to tattoo his initials upon the same arm on which these tattoo marks were, namely, on the left arm, and that the two lads between them managed to tattoo the letters “R. C. T.” lengthwise on the arm instead of crosswise, there being already the marks of an anchor, a cross, and a heart tattooed crosswise upon the same arm. If that statement be true, it is of course conclusive of the case. His evidence is as follows: “Do you remember during the time you were at Stonyhurst doing anything to Roger’s arm?—Yes. *Q.* What was that?—I tattooed ‘R. C. T.’ on his arm—that is to say, I did part of it. *Q.* Do you remember when it was that you did it?—I cannot swear to the exact time: it was during the time I was at Stonyhurst with him. *Q.* Before I ask you how it was done, let me ask you at the time you tattooed the ‘R. C. T.’ on his arm, was there any existing mark upon it?—Yes. *Q.* What existing mark or marks were there upon his arm when you tattooed the ‘R. C. T.’?—A heart, a cross, and an anchor. *Q.* Upon what part of the arm?—This part of the left forearm (the inner part). *Q.* Where were the ‘R. C. T.’?—Lower down. **MR. JUSTICE LUSH**: Lower down towards the wrist?—Lower down towards the wrist. **MR. HAWKINS**: Was there any other mark besides the mark you have already told us of?—There was a slight blotch, or something like a blotch near to the wrist. **THE LORD CHIEF JUSTICE**: Was that previously existing, or was that part of what you did?—Previously existing. **MR. HAWKINS**: Had you learnt to tattoo before that occasion?—No. *Q.* How was



that? who taught you how to tattoo?—Roger Tichborne. *Q.* And how were the initials which you marked on his arm tattooed? What was the process?—A small bit of deal wood was used, in which three needles were tied together. They were put into Indian ink, and inserted under the skin. *Q.* Who was present besides yourself and Roger Tichborne when this was done?—I cannot remember. *Q.* As I understand you, this was your first attempt at tattooing?—Yes. *Q.* Does that enable you to say at all how the letters were done?—They were done in a thin line, very badly done. *Q.* Upon that same occasion was anything done to your arm?—Yes. *Q.* By whom?—By Roger Tichborne. *Q.* What was done to your arm?—He tattooed an anchor on it. *Q.* You have that mark existing upon the arm?—I have. *Q.* Would you mind showing that?—Not the slightest. Whom shall I show it to? **THE LORD CHIEF JUSTICE:** To the Jury.” (Then he showed his arm.) One of the Jury then asked whether that was darker when it was first done? and the witness answers, “a little darker.” Then he is asked, “You say he tattooed you; did you before he left see the tattoo mark on his arm afterwards?—I cannot swear that I did. I have no doubt I have.”

Now, that evidence you see is positive. A doubt was attempted to be thrown on the accuracy of Lord Bellew's recollection on the subject; because it appeared that when he first was applied to, he did not distinctly remember what part it was that he himself had done of the tattoo on Roger's arm. He had a tolerably clear recollection of what there was on the arm, but as to which part of it he had himself done, or taken part in doing, his memory was certainly for a time indistinct. He explains how the whole thing was brought vividly to his mind, and how he recollected the whole of it. I shall draw your attention to that in a moment; the first question is whether he is entitled to belief at your hands. The learned counsel for the defendant has deliberately and emphatically charged him with perjury—with having stated that which he knew to be false, in saying that Roger's arm was tattooed, or that he had anything whatever to do with the tattooing, or with any part of it; but on what ground does he ask you to disbelieve the witness? Lord Bellew has committed a wofully sad sin. Under what particular circumstances we do not know, but no doubt another man's wife left her husband and joined him, and they have lived together, at all events, for a time, and Dr. Kenealy asks you deliberately to come to the conclusion that, because of this offence, Lord Bellew is not to be believed upon his oath—nay, more, that you must assume him to be perjured. Is that, do you think, a view that you can properly adopt? Is it because a man has committed a breach of morality, however flagrant, that those to whom his testimony may be important in a court of justice are to be deprived

of it? If every flagrant breach of morality were to carry that consequence with it, how many persons would be excluded from courts of justice as witnesses unworthy of belief? If a flagrant breach of morality is to deprive a man of credit at the hands of a jury, in what position would the defendant himself be? If seduction in its worst and most obnoxious form—as ascribed to himself by the defendant—would not amount to a disqualification of the witness, why should the sin which Lord Bellew has fallen into destroy his credibility at the hands of the jury? While the learned counsel has a proper horror of adultery, for seduction, however heinous the circumstances attending it, he has an accommodating indulgence. I do not remember ever to have witnessed in a court of justice a more painful exhibition than the cross-examination of Lord Bellew, and I do not think that there are many men at the English Bar, if any, who would have raked up that story and thrown it in his face on such an occasion; and I cannot but think that the malevolent and rancorous spirit to be found in the instructions of the learned counsel must have infused into his mind a feeling of bitter malignity towards the unfortunate witness whom he had at that time in his power. I shall not easily forget, notwithstanding the expression of regret which accompanied it, the malignant glee with which the cross-examination was introduced. Having first asked whether they were in the habit of playing practical jokes at Stonyhurst—"Talking of practical jokes," said the learned counsel, "Did you ever play a practical joke upon a friend of yours, a Captain Harvey? Did you ever take away your friend's wife?" That is the way in which that question was introduced, I say with a bitter and malignant exultation over the witness, who could not refuse to answer the question, however anxious he was not to compromise the unfortunate lady who had been mixed up in it. We must take Lord Bellew's account of it. He says, though of course anxious to spare the lady, and not to compromise her more than necessary, that he did not take her away; that she voluntarily left her husband; and, according to his account, the husband was actually a party to her leaving his house and joining her paramour. We have not been told whether the case was ever taken to the Divorce Court, or what all the circumstances connected with it were; and, though the taking away another man's wife cannot under any circumstances be otherwise than a grievous sin, it may have been in a less aggravated form than the question of the counsel would suggest. But I come back to the point from which we started—is the administration of justice, or are parties interested in a cause, to be deprived of the advantage of a man's testimony because he may have committed a grievous fault of that description? Because it must not be forgotten that, if the evidence of a witness were at once to be thrown aside because of some offence he may have antecedently committed, it is

not the witness who would suffer, but the party who requires his evidence. What if it were the other way? What if the defendant had had these tattoo marks on his arm, and Lord Bellew had come forward to prove he was Roger Tichborne by swearing he had helped to tattoo him? How would it have been if the learned counsel for the prosecution had asked you to disbelieve him, because he had taken away the wife of another man? And yet the same principle must obtain in the one case as in the other. There are crimes and offences which savour so much of falsehood and fraud that they do go legitimately to the credit of witnesses. There are offences of a different character, and grievous offences if you will, but which do not touch that particular part of a man's moral organization, if I may use the phrase, which involves truth, and there is an essential distinction between this species of fault and those things which go to the very root of honesty, integrity, and truth, and so do, unfortunately, disentitle witnesses to belief. A man may have committed a breach of morality, who yet would scorn to tell a lie, as base and dishonourable, and who would shrink with horror from committing wilful and deliberate perjury. But the learned counsel goes still further than to charge Lord Bellew with perjury; he expressly says not only that Lord Bellew has committed perjury, but that, inasmuch as you cannot suppose that a man in Lord Bellew's position would commit perjury for nothing, he has done it because he has been bribed. But there cannot be a bribe without two parties to it—the party who receives and the party who gives. So that we have here not only this charge against Lord Bellew of perjury and bribery, but there is some one behind who has paid the price of perjured testimony. I should like to know who it is? Does the learned counsel mean to say that her Majesty's government, the prosecutors in this case, have supplied the means to purchase suborned testimony? Does he mean to tell us that Lord Stourton, the trustee of the infant heir, has been guilty of bribing Lord Bellew? Does he mean that the family, the Tichbornes and the Seymours, who have no more interest in this matter than you or I, have done it? Does he mean that they have subscribed some large sum to buy this nobleman to give perjured evidence in this case? If not, who is it? Is it Detective Whicher or Mr. Bowker who has put his hand into his own pocket and found the means of buying this perjured testimony? The bribe must have been a large one—a man in Lord Bellew's position is not to be bought for nothing. I must say that in my opinion a charge of this kind is open to the strongest reprobation, as a sad and painful abuse of the privilege and freedom of speech which counsel ought to have the right of exercising, but always within proper restraints and with a due sense of propriety and decency; and I rejoice that when my Brother Ballantine, whose zeal never flags in the interest of his



client within proper limits, had Lord Bellew under cross-examination, he neither thrust the hot iron into his soul by putting these painful questions to him, nor afterwards ventured to suggest for a moment that he had been guilty of perjury, or that any one had been guilty of the heinous offence of bribing him. It would have been of course quite legitimate to suggest that Lord Bellew was mistaking Roger for some one else as having been tattooed by him; but it never occurred to Serjeant Ballantine to suggest that Lord Bellew had been guilty of perjury, or to rest such a charge on no better foundation than that he had some years before committed adultery. Again, I must say I think the learned counsel took advantage of the privilege of cross-examination to abuse it to an extent which I should be sorry to see again repeated. Before making this attack, with an indiscretion of a very singular character, if he contemplated making it, he proceeded to bring forward a correspondence between Lord Bellew and Mr. Bowker, which shows that so far from Lord Bellew coming into the box to state something he had been suborned to state, or which he did not state from the outset, he was applied to by Mr. Bowker to know whether it was true he had tattooed Roger Tichborne, an inquiry which of course, as an honest man, he could not refuse to answer; and, with a slight qualification, the evidence he has given is the very same thing he represented from the beginning. It seems that when it was known the defendant was coming to this country as Roger Tichborne, Lord Bellew must have said, or written to some one, that if he was the real Roger he would bear the mark of tattooing upon him, as he had tattooed him; and this got known, and Mr. Bowker, being at that time concerned for the defendants in the suit, wrote a very proper letter to Lord Bellew, which is in these terms:—"My Lord, being engaged on the part of Lord Arundell, Lady Tichborne and family, resisting the claimant to the estates, I take the liberty of addressing you. I understand that your Lordship was at Stonyhurst with Mr. Roger Charles Tichborne, and during that time tattooed on his arm emblems, 'Faith, Hope, and Charity.' The family are well aware that he was tattooed, and if we could ascertain when and where, and by whom he was so marked, it would tend to settle the question. Consequently, if your Lordship would favour me with a letter by next post to this address, it may be of important service. Lord Arundell is endeavouring to find out your exact address. The urgency of the matter, I trust, will apologise for my intrusion. In haste, I have the honour of subscribing myself, your Lordship's most obedient servant, F. BOWKER." The letter having been read, Dr. Kenealy asks, "Have you ever told any person you tattooed on his arm emblems of Faith, Hope, and Charity?—No, not to my recollection. Q. Not to your recollection?—Not to my recollection. Q. Did you, or did

you not?—I do not remember having done so: it is very unlikely I ever did it.” Then Lord Bellew says, “May I make an observation? I understood your last question to be, ‘Did you say anything about Faith, Hope, and Charity?’ I mean to say, previous to that I had a correspondence with Mr. Bowker about it. Q. I thought that was the first letter, ‘My Lord being engaged on the part of Lord Arundell.’ Had you a correspondence before that with him?—Did I understand your question right when you said, ‘Did you ever tell any one,’ so and so? did that refer to previous to the correspondence, or to the correspondence itself? Q. It referred to this: Had you ever told any person during that time, had you told any person you tattooed Faith, Hope, and Charity previous to this correspondence?—No, not to my recollection. Q. If you had not tattooed him with Faith, Hope, and Charity, of course you could not have told anybody you had?—No, but I could have had an indefinite recollection when the things were first brought to my recollection as to what part I tattooed myself. Q. Did you ever ask Mr. Bowker how he came to suppose you had told any person that you had tattooed on his arm emblems—Faith, Hope, and Charity?—Never. Q. I think you never had told anybody about it, that you had done so, that you had tattooed him with emblems, Faith, Hope, and Charity?—Not to my recollection. The LORD CHIEF JUSTICE: Prior to this correspondence?—Prior to this correspondence. Dr. KENEALY: I do not think you gave me the exact date when you say you tattooed Roger?—It is during the time I was in philosophy with him. Q. You were a philosopher for a couple of years?—Yes. Q. Cannot you give me a more exact or precise date than that?—I cannot possibly answer that. Q. You did not tattoo people every day?—Not every day. Q. Cannot you tell me about what time? was it in 1847 or 1848? or when it was you tattooed him?—I cannot fix accurately the date. Q. Was anybody present when you tattooed him?—My impression is there was somebody present, but I cannot remember who it was. Q. Have you tried to remember whether anyone was present when you tattooed him?—I have. Q. You cannot remember?—It is my impression one of the philosophers was there, but I cannot remember with accuracy which of the philosophers it was.”

Gentlemen, as you have seen, the letter of Mr. Bowker was not that of a person proposing or suggesting to another to give false evidence, but that of a solicitor properly seeking for information on behalf of his clients. Now comes the answer of Lord Bellew: “Barmeth, June 8th, 1871. Sir,—I am in receipt of yours of yesterday. I was at Stonyhurst with Roger Tichborne. I remember his having a heart, anchor, and cross tattooed on his arms, also R. C. T. I remember assisting to tattoo his arms, but find it

difficult to remember whether I tattooed the heart, anchor, and cross, or R. C. T. The former were on his left arm, and I am not certain whether the other (R. C. T.) was not on his right arm, but as he had another mark on his left arm above the wrist, that may account for my want of accurate memory on this detail." Then he is asked in the terms of the letter, "Assisting?—Yes. Q. Who did you assist?—I must explain that. First of all Roger was speaking of tattooing. He made the instruments for tattooing. He commenced on himself. Whether he commenced on my arm and I finished off on his, which is more likely, I cannot remember the details of. Q. The letter was of the 8th of June, 1871, and you cannot remember which you did?—I was not certain at the time. Q. What afterwards made you certain?—I had a conversation with Mr. Seymour in the gallery." I suppose he meant the gallery of the House of Commons, but I am not sure. "Q. Now what do you say it was that brought back to your memory what you had not before present to your mind?—I asked Mr. Seymour what he remembered of the tattoo marks. He gave me a description of them, and he said, 'I remember the letters being done very thinly and uneven, like a school-boy would do them.' It then flashed across my memory most distinctly that I had done the letters and not the other, that the other was done before, and at that moment I was perfectly satisfied, as I am now. Dr. KENEALY (reading): 'The former'—that is the heart, anchor, and cross—'were on his left arm, and I am not certain whether the other (R. C. T.) was not on his right arm.' Was it Mr. Seymour that set you right about that?—Yes. Q. How did you get right about that?—When I was first questioned my memory as to there being marks on the arms was not perfectly distinct. Thinking it over in association with another, I formed the opinion I have formed. I am perfectly satisfied, as near as I can be to anything, that it was on his left arm; that I tattooed 'R. C. T.' on his left arm; and that the other things, the heart, cross, and anchor, were already on the arm when I tattooed him. Q. Did you remember that before you went to Mr. Seymour, or after?—The only confusion in my mind before I saw Mr. Seymour was whether I had tattooed part of the other or not; or, in fact, whether I had tattooed the other or not; but I remember the marks perfectly. It was only when I spoke to him I recollected the distinction. The distinction flashed on my mind, the workmanship put me in mind of the fact that I could not possibly have tattooed the heart, cross, and anchor, which were done artistically. This was the first attempt at tattooing in my life. Q. Were you in doubt on both circumstances?—Not in doubt about the fact of tattooing. I was in doubt about the part I had done myself. Q. You were in doubt what you had done as to tattooing upon the arm?—Yes. Q. Secondly, whether there was



not one on each arm?—Yes. Q. And then in doubt?—Will you repeat the question? Q. First you had a doubt whether you had done the whole or a part?—First of all I was in doubt what part I had done. Q. That is, whether you had done the whole or a part?” says the learned counsel, misinterpreting the witness—“No, not quite. Q. You were in doubt what part you had done?—Yes. Q. Secondly, you were in doubt on what arm it was done?—Only when I wrote to Mr. Bowker, and my memory righted itself before I saw Mr. Bowker again. Q. Had you seen Mr. Seymour in the interval?—No. Q. You had not?—No, positively not. Q. You had not seen him in the interval?—No. Q. What did you write to Mr. Bowker again? This is only one of your letters. There are two?”

That was so. Between that date and the 15th he had thought the thing over, and he writes from Barmeth again on the 15th of June to Mr. Bowker: “Sir, Roger Tichborne was tattooed at the Seminary at Stonyhurst, when we were philosophers there. I think Roger Charles Tichborne was already tattooed before he came, but am not sure. I can swear to all the marks on his arms, although not accurate about their history on all points. He had a mark above his wrist on his left arm that looked like a tattoo mark that had been badly done, and merely produced a dim ‘splotch’ like this, but not so large quite. I send this through my brother-in-law, Mr. Ryan, who will give you my reasons for so doing.”

Then Dr. Kenealy asks, “On what arm was the blotch?—On the left arm, here. Q. About what was the size of the blotch?—About the size of a fourpenny piece. Q. You are quite distinct about that being there?—Quite. A JUROR: Was that tattooed?—It appeared to me to be so. It was not very dark. Dr. KENEALY: You say in that letter you are not sure whether he was tattooed before he went to Stonyhurst or not. Did you and he have any conversation about these things?—When? Q. When you tattooed him as you say?—I suppose we were talking about what we were doing. Q. What I am calling your attention to is this, in that second letter to Mr. Bowker there is some uncertainty whether he was tattooed when he came to Stonyhurst or not. Did you or he ever have any conversation on the subject of tattooing which you remember?—Not that I remember.” He is asked how it came to pass, but does not exactly remember. Then he is pressed as to what part of the building it was done, and he says he believes it was in his own room. Then he is asked, “Did you tell anybody in the college who is alive that you tattooed him?—At what time? Q. At that time?—I cannot remember, I am sure; boys do many things they do not think of five minutes afterwards. Q. Did you ever see it again after you tattooed him?—I cannot call to mind any particular occasion on which I have seen it, but I have no doubt I have seen it afterwards.

I feel certain in my own mind, but I cannot swear to any particular instance." Afterwards he is asked: "Was the mark you say you put on this arm lengthwise, or crosswise, or how?" That may be important. Then he explains by reference to his own arm the way in which the letters were put, and says that while the other things were transversely across the arm, those letters "R. C. T." were lengthwise. Then there comes much questioning as to the particular year in which the tattooing took place, and what the witness has said about it. The witness is unable to fix it precisely; but he says, "My impression is I did it the second year Roger Tichborne was there, because I moved the second year to the front, or after the first six months. My impression is it was in the front room, but I will not swear it."

Having been so cruelly reminded of his transgression of past years, on re-examination Lord Bellew is asked this question:—"Have you any interest in this cause?—None whatever. Q. Did you volunteer your evidence at all?—No. Q. Was the first time that you were invited to consider this matter and give evidence about it when you received a communication from Mr. Bowker?—It was. Q. You have been asked whether you mentioned it; I do not know whether you know how the matter came to the knowledge of Mr. Bowker?—I have not the slightest idea. Q. When did you know of the defendant coming to England?—I had heard of it some years before. Q. Do you recollect whether you had mentioned the tattoo marks at all among your friends?—I should think very likely. Q. Had it been made the subject of conversation?—Yes; I had spoken occasionally about it, no doubt." Then he is asked this, which, although not immediately bearing on the tattoo question, is not altogether unimportant: "You say Roger Tichborne was an intimate friend of yours?—He was. Q. When you last saw him in Dublin, were you and he on very intimate terms?—I saw very little of him in Dublin, but we were very good friends when we met, the same as before. Q. At Stonyhurst you had been very intimate friends?—Yes. Q. Was any application made to you, or did you receive any communication at all from the defendant on his arrival in England?—Nothing whatsoever. Q. Roger Tichborne knew where you were living at Barmeth, as I understood he visited you there?—Yes. Q. Roger being your intimate friend at Stonyhurst, and having seen you at Dublin, would have known where to address you?—Perfectly. Q. You had no communication of any sort or kind until Mr. Bowker asked you to give information on the subject?—None whatever. Q. You have told us that in the first place you were a little uncertain as to which of the marks you had done, and the precise position?—A little. Q. You have told us the conversation with Mr. Alfred Seymour which led to your being certain?—

Yes. *Q.* Have you now any doubt of the fact that Roger was tattooed?—None whatever. *Q.* And by yourself?—And by myself. *Q.* And have you any doubt of the marks as you have described being on the one arm?—None whatever. *Q.* As regards the splotch which was near the arm, how big was it?—About the size of a fourpenny piece. *Q.* Was it coloured?—It was very much the same as a tattoo mark, a bluish colour, as if it had been tattooed and badly done; they had not succeeded in it.” Then being examined by the court, he is asked: “Do you know the difference between tattoo marks produced by gunpowder and tattoo marks produced by Indian ink?—I have sufficient knowledge of tattoo marks produced by gunpowder and tattoo marks produced by Indian ink; and the one produced by gunpowder always appears to be darker. *Q.* Darker blue?—Darker blue. *Q.* Bearing that in mind, can you say whether the cross, anchor and heart were done in Indian ink like the letters which you made, or whether they were done with gunpowder?—The cross, anchor, and heart, from my recollection of them, were done with gunpowder. I should suppose it was done with gunpowder.”

Gentlemen, you must form your judgment on all this, whether Lord Bellew has come forward here to commit gross, wilful, deliberate perjury, in a matter in which he can have no possible interest, unless you go the length of supposing his testimony has been bought by the abominable means of a bribe. You see he does not volunteer to come forward. He had spoken about the tattooing of Roger to his friends—a thing, under the circumstances, pretty certain to happen if he had in fact tattooed Roger—when the question as to the defendant being Roger Tichborne arose, and became the subject of universal discussion. It reaches the ears of some one connected with the case, and Mr. Bowker is directed to make inquiries about it. Mr. Bowker writes to Lord Bellew. Lord Bellew is at first a little confused in his recollection of a thing that had happened years before, but he tells what he then remembers, and by degrees his memory is revived. Was the correspondence which I have just read to you a genuine and honest one? or was it entered upon by Mr. Bowker, and followed up by Lord Bellew, with a view to perjury? The conversation with Mr. Seymour appears to have been a natural one. They met, and Mr. Seymour had learnt by that time of the communication between Lord Bellew and Mr. Bowker, and he knew that Lord Bellew had stated that he had had something to do with the tattooing of Roger, and when these two gentlemen met in the gallery of the House of Commons nothing was more natural than that the conversation should turn on this subject, and then Lord Bellew would naturally ask Mr. Seymour, a relation and intimate friend of Roger’s, “What do you recollect about the tattooing? Do you recollect his being tattooed?—Yes. Do you recollect the marks?” He does,



and he states the marks, and then, says Lord Bellew, "the moment he told me about the letters, and about those letters being so badly done, it occurred to me at once that that was the part I had taken in it, the whole thing became clear to my mind, my memory was revived, and my recollection became as fresh as if I had done it the previous day, and from that hour I had a distinct appreciation of all the circumstances." He is next asked to come forward and give evidence on this all-important subject. What was the course which it was incumbent upon him to adopt under the circumstances? Why, to say, "If I can throw any light on this matter by the evidence I can give of a fact deemed essential to the proper decision of the case, of course I cannot withhold my testimony." Everybody is bound to afford such assistance as he can in a court of justice by speaking to facts which are within his knowledge, and which may throw light on the subject-matter of the inquiry. Is this what Lord Bellew has done? Or do you believe he has come here to commit, as has been asserted by the learned counsel, wilful and deliberate perjury? If his statement substantially differs from anything he has said before; if you can see any evil motive for making that statement which calls on you to disbelieve him, deal with him accordingly; but if you do not, here is the clearest, the most convincing, the most conclusive testimony that Roger was tattooed, which at once disposes of the main issue in this cause. Fortunately for Lord Bellew, being thus charged with perjury, his testimony does not at all stand alone. It is supported by a strong body of evidence which goes to show that Lord Bellew is right in the statement that he has made that Roger was tattooed, and that he was tattooed exactly in the way in which Lord Bellew says he was—that is to say, that he had the three emblems of Faith, Hope, and Charity, the cross, the anchor, and the heart, across the left arm, with the initials rudely and inartistically done lengthwise on the same arm.

I shall proceed to call your attention to the various witnesses who speak to the fact of having seen these marks on the arm, and I do not think it would be possible that you could disbelieve their evidence. Whether you will accept the theory by which the learned counsel for the defendant endeavours to neutralise the effect of their testimony, is another and different question, which will have to be considered hereafter. First let us see how far these witnesses tend to the confirmation of Lord Bellew as the principal witness. I begin with Lady Radcliffe, who, although she may have a very deep interest in this cause, can hardly be supposed to be committing perjury in this part of the case. She speaks as to these tattoo marks, and she says the first time she ever saw them was in the first year after she came home to Tichborne, when Roger was there, which would be the time when he was studying for the army and paying his visits to Mr. Moberley at Owlesbury. "Do you remember during that visit

observing anything upon him?—Yes. *Q.* Can you tell me the occasion on which you first of all noticed anything?—I think the first occasion was when I wanted some flowers out of the water at Tichborne—he turned back his sleeves, and I saw that he was tattooed with a cross, heart, and anchor. *Q.* Do you remember anything else?—No, I do not. *Q.* Did you have any conversation with him on that occasion?—I am not sure on which occasion it was that I spoke on the subject. *Q.* If you do not remember it on that occasion I will not trouble you about it at this moment?—I am not sure whether it was that occasion or not. *Q.* It was during that visit, at all events, that the tattoo met your eye?—Yes. *Q.* That you are certain of?—Yes; I suppose I spoke of it at the time, but I am not quite sure whether it was at that time that he offered to tattoo me. *Q.* You do not remember distinctly the conversation that then occurred?—No, I do not. *Q.* Now it was on the 9th of August, I think you will find, indeed you have already said, that Roger went to town?—Yes. **THE LORD CHIEF JUSTICE:** Was it before he left you that you had the second opportunity of seeing the tattoo or an after time?—An after period. I only recollect it at one time during that visit. **MR. HAWKINS:** You have told us that you think you saw the tattoo marks, although you could not give us the details of any conversation about the tattoo marks. I should like you now to tell me about having seen the marks. **THE LORD CHIEF JUSTICE:** She has not told us of the second occasion. **MR. HAWKINS:** I am going to ask her that, my Lord. *Q.* The first occasion that you saw the tattoo marks was in 1849?—Yes. *Q.* Do you remember when afterwards you saw them next?—No, I am not quite sure. I remember seeing them at Christmas, the end of the year 1851, or beginning of 1852; it strikes me I saw them between these times; I am not quite clear. **THE LORD CHIEF JUSTICE:** Tell us what you recollect about 1851 and 1852?—I remember his showing his arm to several of our friends in the drawing-room at Tichborne. *Q.* I think you say in the drawing-room?—Yes, in the drawing-room. **MR. HAWKINS:** Does that recall to your recollection the occasion when they were shown?—No. *Q.* Or to whom?—I remember several people who were present. *Q.* Can you recollect any of those who saw them at the time?—Yes; Miss Teresa Mostyn (now Mrs. Francis Whitgrave), and, I think, Miss Amy Weld, who is now a nun. I think she was present. **THE LORD CHIEF JUSTICE:** Was your mother present?—I am not sure; I think very likely; I am not positive. **MR. HAWKINS:** Did he say anything about them?—I am not sure whether it was on that occasion that he said, ‘Will you let me tattoo you? will you be tattooed?’ *Q.* You cannot say whether it was on that occasion, but he did put that question to you?—Yes, once or twice. *Q.* Did he say anything more beyond asking, ‘Let me tattoo your arm’?—I said, ‘No, I do not

like pain,' and he said, ' Oh, it will not hurt you much.' Q. However, you declined?—I declined, and I think he said it was done with needles, and gunpowder rubbed in. After that—I think it was on the last time that I ever saw him—he told me he intended to have a cross tattooed on his heart, that if he died among the Indians they would know he was a Christian. At that time he was full of going to travel amongst the tribes in North America." Then she is cross-examined. " You say you wanted some flowers—that was the time?—That was the first time I saw the tattoo. Q. Was that in 1849?—Yes, my mother was there. Q. Do you mean that she was present?—She was present. Q. When he put his hand into the water to get them?—Yes, and I think Mr. Robert Tichborne, my uncle, and Miss Charlotte Talbot, afterwards Mrs. Whitgrave. We were all there together. Q. All present when he put his hand in?—Yes, we were all out together. Dr. KENEALY: Miss Charlotte Talbot?—Yes. Q. The two others are dead, she is alive?—No, she is dead too. Q. Were they flowers that were growing in the water? or had they fallen in? or what?—No, I think they were forget-me-nots, growing in the water at Tichborne, and water lilies also, I remember both. Q. But which were they? because," says the learned counsel, " I never saw forget-me-nots growing in water?—Yes. Q. They do at Tichborne then?—Yes, you will see them there now. Q. Forget-me-nots and water lilies? How long had he been back from Goodwood when this happened?—I think it was a few days before he went. Q. Were the water lilies growing by the side of the bank? or how?—Yes, close to the edge. Q. And did he pull up the whole of his shirt sleeves?—Turned them up so (and she showed on her own arm). Q. As far as that?—Yes, I think, so far as I can recollect. Q. Did he unbutton his shirt sleeve or his coat? Do you remember whether coat sleeves were worn very tight at that period?—I have not the least idea, I only saw his arm. Q. You have not the least recollection of what was the fashion at that time about coat sleeves?—Not the least. Q. You saw quite distinctly, as you say, those three marks?—Yes. Q. The whole three?—Yes. Q. Nothing else?—Nothing else that I remember. Q. Was it all the same colour, or a different colour?—All about the same colour, I think. Q. You think?—Yes, I am sure they were. Q. All the same colour?—Yes. Q. Was that colour brown or blue?—Dark blue, very dark blue. Q. Dark blue?—Yes. Q. Could you distinguish it from black?—Oh, yes; not black like ink." Then she is asked, " How often did you see his arm exposed in this way altogether?—I cannot recollect: I remember three times distinctly, but I might have seen it at other times; I cannot say. Q. You have a distinct recollection of three occasions?—Yes. Q. Now you have told us of two occasions, the second time I think was in the drawing-room?—In the drawing-room at Tichborne. Q. Are all the people dead who



were in the drawing-room when he exhibited his arm?—No. *Q.* Who is alive?—Mrs. Francis Whitgrave is alive. She was Miss Mostyn at the time, and is alive now. *Q.* Anybody else?—Well, I think Miss Amy Weld saw them.” Then the learned counsel says, “She is practically dead : I think you told us yesterday she is in a convent?—She is in a convent. *Q.* She cannot get out?—Oh, she could get out in the case of necessity. **THE LORD CHIEF JUSTICE :** Of course she could. **DR. KENEALY :** There is no re-entry into the world after a lady enters a convent.” Upon which I reminded him that there was a certain process out of this court, being nothing more than a few words on a small piece of paper, which could open the gates of any convent or any other place, however strictly fortified, in this country, if we only sent that bit of paper there to command the attendance of a witness in the administration of justice. There was, however, no difficulty whatever about her coming, and a few days afterwards Miss Weld made her appearance, as you recollect. That is Lady Radcliffe’s evidence on the subject.

Then Mr. Gerald Fitzgerald, who is a friend of the family, was staying at Tichborne in 1849 when Roger was there. One evening after the party had broken up and the ladies had left the drawing-room, Mr. Fitzgerald, who was a smoker, went to smoke with Roger. He says: “A night or two after my arrival he proposed to me to smoke a cigar with him before going to bed, and we adjourned for that purpose to his room. I think it was a sitting-room that he used to occupy there, a small room ; I will not be positive, but I am pretty sure it was. *Q.* Will you tell us what passed, if you please?—I sat down, and he went away and took off his coat and waistcoat, and he returned in a loose dressing-gown, and as he came back to his seat he was settling the sleeves of the dressing-gown, and he turned them up to the elbow, the shirt and the dressing-gown, and he held out his arm to me and showed me certain tattoo marks upon his arm. He told me they were tattoo marks ; I should have said they were, but he told me so. *Q.* Do you remember his saying anything more about them to you?—In regard to how they were done? *Q.* Yes?—I remember in a conversation afterwards. *Q.* You say he told you they were tattoo marks?—He did. *Q.* You knew yourself what tattoo marks were?—Well, I had seen tattoo marks previously, and have since. *Q.* And you yourself saw that they were tattoo marks?—I saw that they were tattoo marks, to the best of my judgment. *Q.* At that time do you remember whether he said anything else to you?—Not when he was showing them to me. *Q.* I think I caught from you afterwards that he said something?—Afterwards, all I can recollect of the conversation. **THE LORD CHIEF JUSTICE :** But was it at that time?—The very same time when we sat down, when he sat down to smoke. All I can recollect is that he

mentioned a sailor in connection with the marks as having something to do with them, but as to who the sailor was or where it was done I really cannot say. *Q.* Do you remember at all the character of the marks?—I cannot; I have tried to recollect; they were not representations of animals; they were inanimate objects, that is all I can tell you. *Q.* Is your memory strong enough to tell us on which arm?—That I cannot say; I cannot tell you which arm, or whether on one side of the arm or the other side of the arm, but it was on one of the arms. *Q.* That you are positive of?—Oh, positive.” On cross-examination he is made to repeat that all over again, and then he is asked as to when he first recollected this. “I think you say you remember this, at all events, that you had no reason for remembering it until the trial. How soon during the trial did it revive in your recollection, if I may use the word?—It returned to my recollection previous to the trial, when I heard the Claimant was coming over to England, and I told friends of mine if the man was the real man he would have those marks.” Then Dr. Kenealy quarrels with him for having put that upon him. However, there is the evidence. “Then it was before you heard that the defendant had come over to England that it revived in your recollection?—Precisely.” Then on re-examination, “Did anybody call your attention to these tattoo marks, or do you remember them yourself?—I remember them myself; nobody called my attention to them.”

Then Lady Dormer, Roger’s cousin, speaks of them. “Do you remember anything upon his arm?—Oh, yes, indeed I do, perfectly; he was very much tattooed. *Q.* On which arm?—The left arm, my impression is, but I could not swear to that. *Q.* Do you remember what the marks were?—I won’t swear exactly, but my recollection is they were initials and a cross and heart; they have told me there was an anchor, but that I do not remember. *Q.* You remember the initials, cross, and heart?—Perfectly, and it extended to very nearly the forearm, all up this part of the arm; I do not remember the anchor. *MR. JUSTICE MELLOR:* You say it extended a good deal up the arm?—Yes, a great way up was very disfigured by it. *MR. HAWKINS:* Do you remember when you first saw those marks?—I think he showed them to me casually first, but I expressed my dislike at seeing them, which amused him very much. *THE LORD CHIEF JUSTICE:* The expression of your dislike?—Yes. *MR. HAWKINS:* Did your expressing your dislike make him hide them?—No, he used to be continually showing them to me, when I least expected it, and at that time he wore, which was not the custom, very open sleeves, and he used to do this”—and she represented his pulling up his sleeve—“when I did not expect him, and show me his arm. It used to startle me, and I expressed my dislike, and that amused him beyond anything. When I did not expect it he would

say, 'Eliza, look here' (holding out his arm). That made such a strong impression on my mind I could not forget it. Q. That happened on a good many occasions?—Yes." Then she is cross-examined. "When was it that he first amused himself by showing the tattoo marks?—I think it was at Upton on his first visit. Q. That, you say, was about August, 1848?—Yes. Q. Was anybody present when he showed you the tattoo marks?—I do not know; I do not remember. I do not think when he was staying with us there was anyone with us but himself at that time, and we were very much together. He was a young boy, and I tried to amuse him as much as I could. He used to walk about, and he was with me a great deal—indeed, all day nearly. Q. Nobody was present when he showed you the tattoo marks?—I do not remember anybody. Q. You used a remarkable phrase to my friend: 'They' told you there was an anchor: who are 'they'?—I do not remember who told me, but I think it was Lady Doughty; I am not quite sure. Q. Lady Doughty told you there was an anchor?—She said, 'Do you remember the anchor?' And I said, 'No, I do not.' Q. Was that at the last trial?—No, it was before the last trial. Q. How long before the last trial did Lady Doughty ask you whether you remembered the anchor?—I don't know; it may have been a year. Q. Did he say anything to you when he showed you these tattoo marks?—Merely 'Look Eliza! Look Eliza! Look Eliza!' He used to do it constantly. Q. He made no secret of them?—Not at all. I was astonished. Everyone did not know it who knew him. Q. And you, I suppose, made no secret at any time that he had these marks?—Yes, I did at the beginning, because I was cautioned. Q. I am talking of the year 1848?—No. Q. You made no secret of it then?—Certainly not. Q. You told everybody, I suppose?—I do not suppose I should have told everybody, it would not interest them; but everybody who spoke about them. Q. To anybody who spoke about them you made no secret?—None whatever. Q. You have seen the tattoo, you say, several times?—Yes. Q. It went up nearly the whole forearm?—Yes. Q. Could you give us any idea of the arrangement of that heart and cross?—No, my idea was that the letters were here (showing it on the arm), and the heart and cross above, but I could not bear looking at it, so I cannot tell you distinctly. I never looked at that particularly; I hated to see them. Q. You never asked him how he had got it?—No." In re-examination she is asked: "You were asked about a conversation you had with Lady Doughty; you had heard from her that there was an anchor. Will you be kind enough to tell me what she told you about the tattoo?—She told me there were the initials, and Faith, Hope, and Charity, which were a cross, anchor, and heart. I remember the heart and cross. Before the Claimant arrived I spoke



about those, because I thought it such a very bold thing for anybody to appear who had not those marks on him and to say he was Roger. It struck me that anybody would know him in a minute by those marks. *Q.* That was a matter of observation before he arrived in England?—Before he arrived in England; before he landed. *Q.* You were asked whether you made a secret of those marks. You said in 1848 you did not, but afterwards you did not speak about them?—After he had arrived in England, and I had spoken about it, I was advised not to talk too much about the marks. My poor friend Lord Charles Percy was one of the people who said to me, ‘You had better not say that.’” Then she is asked, when he pulled up his sleeve to show her that he was tattooed, whether he made any observation, or pulled it up suddenly, and she says, “I do not remember his making any observation. I said, ‘What a horrid thing; don’t show me that.’ His arm was so very much disfigured.” He appears to have taken a delight in teasing her by producing it before her when she least expected it.

Then Mr. Reginald Talbot was a boy friend of Roger’s, and was staying at the house at Tichborne when he was there for his vacation in 1846, 1847, 1848, or 1849, in the months of May or June. He used to go there for a week or ten days at a time. He was in the habit of bathing with Roger, and says he must have done so, and seen him undressed, twenty times. He is asked whether he ever saw a mark on Roger’s arm. He first speaks of the issue mark, which we have dealt with, and then we come to the tattoo marks. “Do you remember any mark upon his arm besides the issue mark?—I remember tattoo marks. *Q.* Do you remember where those marks were?—As far as my recollection carries me—I never looked at them very much—they appeared to be here somewhere; between here and there. (The witness pointed to his arm.) The LORD CHIEF JUSTICE: On which arm?—The left arm. Mr. HAWKINS: Did you look at them, or do you recollect them enough to be able to say where the marks were?—I have a mere general recollection of it. *Q.* I only want to know; if you do not know what the marks were, I will not press you on the matter?—I recollect perfectly a heart and anchor, and something else. There was something below, but I do not recollect that, not the first time I saw it. *Q.* Not the first time you saw it?—No, I do not recollect anything else. Afterwards it appeared to me it was larger. The LORD CHIEF JUSTICE: What was larger?—The tattoo marks were after 1846—1846 was the first time that I saw them.” At that time, according to Lord Bellew, the letters “R. C. T.” were not there; when they were added longitudinally on the arm they would make the whole thing appear larger. That corresponds with what this witness says, namely, that the marks were larger after

1846. “ *Q.* As I understand you, when you afterwards saw it in the following year, they appeared to be larger?—I will not say it was the following year that they appeared to be larger. It was one of the years afterwards when I noticed it again.” He further says that on first seeing the tattoo marks, he exclaimed, “What on earth is that sort of low tattoo marks on you?” on which Roger appeared offended, and passed it off, saying, “They are only tattoo marks.” “Observing,” adds the witness, “he did not like it to be alluded to, I did not of course allude to it afterwards.” In cross-examination he is asked, “At that time”—that is in 1846—“as I understand you, the tattoo mark was not so large as it subsequently was, is that correct?—Well, they appeared larger or darker afterwards—larger afterwards. *Q.* Can you give me anything at all like a date as to time when you saw the enlargement?—No, I cannot. I am certain it was between 1846 and 1849; being the last time I saw him, it might have been as late as the last year, 1849; it was one of the years. *Q.* What time of the year 1849 do you say you saw it? The LORD CHIEF JUSTICE: All he says is it may have been. Dr. KENEALY: Of any year, my Lord, after 1846. *Q.* What time of any year between 1846 and 1849, with the exception of the first, which you say was in September, will you say you saw this enlargement?—Well, I cannot say at all. I cannot recollect, because I was there the two years, in the spring and afterwards in the autumn, and then afterwards in the autumn only. I cannot say positively. *Q.* There is 1847, 1848, and 1849, and you cannot fix any month in any of those three years when you say you saw him?—No, I know I did see him, and that is all; I cannot fix any date about the time. *Q.* Was it all the same colour?—Yes, as far as I can recollect. *Q.* But have you not a distinct recollection of whether it was all the same colour or not?—Well, I cannot swear positively. It appeared to me to be all much about the same colour. A portion of it might have been darker than the rest. *Q.* Of course it might. You said you saw it. You were bathing with him about twenty times, and you must have seen it twenty times. Surely you can tell us whether it was the same colour when you saw it last as when you saw it first?—I never saw any change; I never remarked any change. *Q.* Then it was all one colour?—Yes, all one colour. The LORD CHIEF JUSTICE: He has not said anything like it. You really must not alter the answer of the witness. Dr. KENEALY: I do not know what he meant by he never saw any change: it conveys to my mind that it was the same. Mr. JUSTICE LUSH: Your first question was whether one mark was different in colour, then whether it changed colour afterwards? The WITNESS: It appeared to me always the same. Dr. KENEALY: Was it always the same colour?—Yes, as far as I recollect; I will not swear positively. As far as my memory

assists me. *Q.* Then you cannot tell me whether it was or not always the same colour?—No, I cannot. *Q.* Did you make any observation to either of those ladies about the enlargement of the tattoo?—No.” Then in re-examination, “You have been asked about the colour of his tattoo mark, and whether it changed. *Q.* Have you a doubt about having seen it?—No. *Q.* You are sure you saw it?—Positive. *Q.* And it was a subject of conversation in the family before he left England?—Quite so.” Then my Brother Mellor asks: “You stated it was a matter of conversation in the family. Was it frequently, or only at distant intervals that you heard it, at the time that you remember the fact of Roger going abroad and not coming back again? The conversation as I understood was before he went abroad?—Quite so. *Q.* Now, after he had gone abroad, and before the defendant appeared in England, as far as you remember, had the conversation been repeated? or was it, as it were, laid aside or forgotten? or was it the subject of frequent conversation?—Well, it was not the subject of frequent conversation, but it was alluded to. *Q.* It was in the interval?—Oh dear, yes. *Q.* Between the disappearance of Roger and the appearance of the defendant?—Not between the disappearance of Roger Tichborne and the appearance of the defendant, but after: when he first came over, the family said if it was Roger Tichborne he would have tattoo marks. *Q.* When the defendant first appeared?—When the defendant first appeared. *Q.* When you first heard of his coming as a claimant?—Yes, of his first coming to England, or it might be a few weeks before he arrived; when it had been announced. *Q.* Then there was a discussion of that kind where tattoo marks were referred to?—It was not a discussion, it was referred to or spoken of. *Q.* I do not mean a discussion in the proper sense of the term, but it was a subject of conversation?—Yes.” So much for that.

Then we have Mrs. Greenwood. “Do you remember Roger Tichborne showing you anything upon his arm?—I remember his telling me a great deal about the tattoo marks—I cannot swear exactly to having seen them—and his describing how it was done. *Q.* Do you remember about the period when first of all he spoke to you on the subject?—I cannot recollect, but I think it must have been before he went into the army. I think it was before; he had come over from Tichborne. *Q.* A little before he went into the army you think?—Yes, I think so, as far as I can recollect. *Q.* Do you remember what was the conversation you had with him about it?—Yes, I had never seen tattoo marks, and I had heard that Roger Tichborne had been tattooed. I asked him about it, hoping that he might show me the marks. *Q.* Do you remember what you said to him?—I said, ‘Are not you tattooed, Roger?’ and ‘How was it done? Did not it hurt you very much?’ He said, ‘Not at all; it



was done with a needle; it does not hurt in the least. Let me tattoo you; I should like to so much.' I declined. I said I did not wish to have my skin all marked about. *Q.* Was there anything further took place on the subject of that?—He merely told me it was done with a needle and gunpowder, I think. I am almost certain he said gunpowder. As to describing what the marks were I have heard so much talk about that that I should not like to say I have seen them. I cannot swear I have seen them. *Q.* Have you any belief on the subject?—My idea is that he pulled up his sleeve and showed them to me, though I would rather not swear to that. *Q.* The question I put to you is, is that your belief?—It is my idea that it was. *MR. JUSTICE MELLOR:* Is it your belief that it was?—My idea was that he showed it to me at the time. *Q.* Exactly, but there is a distinction between idea and belief. The question is do you believe he showed it you?—Well, I will not swear it. I decline to swear to it." Then again my Brother MELLOR asks, "When he spoke to you and told you how it had been done, did he at all describe the marks to you, although you are not sure, you say, you saw it, but have an idea he did? Did he or not tell you what the marks were?—No. *Q.* Or describe them in any way?—No, the vision I have is merely of R. C. T., an anchor, and cross—always a sort of idea of having that before me, but whether I heard it or have seen it, it is so many years ago, I cannot say. *Q.* 'R. C. T.' and a heart, was that from what Roger told you?—No, I do not remember that he told me. *MR. HAWKINS:* But I understand you the idea is derived—that is to say, was in your mind—many years ago?—Yes, many years ago. *Q.* It is no new idea?—No, I mentioned it many years ago; it was on his arm. *Q.* I mean before the Claimant came to England?—Oh, yes, years before." Then in cross-examination she is unable to fix the year the conversation took place, but thinks it was in the year when Roger went into the army. "Was anybody present when you say Roger told you he was tattooed?—I do not recollect anybody being present but myself in the room with Roger. *Q.* Did you say he said it hurt him very much?—Not at all, he said it gave him no pain whatever. 'Let me tattoo you,' was his remark. *Q.* Do you know when persons are tattooed there is a sore comes on the skin?—He told me it did not hurt him. He said it would not hurt me in the least if I would let him tattoo my arm. *Q.* You have no recollection that he showed it to you, you have only an idea?—Only an idea. I should not like to swear to it, it is so long ago. *Q.* Did he ever speak of it more than once?—I do not recollect."

The next witness I have to call your attention to is Mrs. Whitgrave, who was Miss Mostyn. She was present on one of those occasions when Roger showed his arm. It was at Tichborne, in the year 1852. "Do you remember any tattoo marks?—Yes, I seem

to see them now. *Q.* Will you describe them?—He was talking about tattoo marks, and he pulled up his sleeve and showed that he was tattooed. There were three of us standing round. It was, I should say, very roughly done. The punctures were far apart, and I remember a pale purplish blue, I should say, was the colour.” Then she describes their position, as being on the fore part of the arm. “*Q.* What did you notice?—I cannot remember, it was very indistinct. *Q.* What is your memory of the marks?—Well, I cannot remember whether they were figures or whether they were letters, or what they were; it was a very rough specimen.” So that she has only a very indistinct recollection of what the marks were. “*Q.* But you have a perfect recollection that the marks were there?—Yes, a perfect recollection that the marks were there;” and she says, “I think it was in the drawing-room at Tichborne that this took place. I think we were all standing in front of the fire-place on the rug. That is my recollection of it. **MR. HAWKINS:** According to your recollection, who were present?—I do not remember. *Q.* You think there were three?—I think there were three of us standing round him. *Q.* But who they were you do not remember?—No, I would not say. *Q.* Can you tell whether they were gentlemen or ladies?—Yes, three of us girls—I think Lady Radcliffe was one.” Then in cross-examination she says Miss Weld was present, and she thinks Lady Doughty was there too. She is pressed again about her recollection of the marks. “You could not say what the figures were, whether figures or letters?—No, they were very indistinct. *Q.* Your memory is not very distinct on that head?—No. *Q.* Were the marks such as might be covered by half-a-crown or a shilling or so?—I think they were about that length (describing), and went across the arm about here. That is my recollection of them. *Q.* Crosswise?—Crosswise, I think. *Q.* Not lengthwise?—No. *Q.* And down here near the wrist?—Yes. *Q.* Have you now a distinct remembrance of that so as to be able to say they were not in the upper part of the arm? **THE LORD CHIEF JUSTICE:** Which do you mean by the upper part? do you mean above the elbow, or the thick part? **MR. McMAHON:** The thick part of the forearm?—I have told you to the best of my recollection, I think they were about here. *Q.* You think they were near the wrist?—Yes. *Q.* You said they were a purplish blue?—Yes, purplish blue. *Q.* How high did he pull up his shirt when you saw them?—A very short way—I should say just turned back his sleeve. *Q.* I think you said they were inartificially done, and the punctures were wide apart?—Yes, very roughly done, I should say.” She was then asked by me: “As I understand you, you have no certainty about the time when?—No, I have no certainty about the time. *Q.* Or who was present?—I will not say anything about dates. *Q.* Nor what the marks were?

—No. *Q.* But I understand you to say that you have the certainty in your mind of having seen marks on his arm?—Yes. I have never seen any tattoo marks since till only the other day, when I saw some on a gentleman's arm so perfectly different; they were beautifully done, and those on Roger's arm very roughly done. *Q.* I understand that Roger Tichborne only pulled his sleeve a short way up?—Yes. *Q.* So that what you saw was at the bottom of the arm?—At the bottom of the arm."

Then comes Mr. Vincent Gosford, who would also be likely to know something about this. Mr. HAWKINS: "Do you know anything about any tattoo marks?—If you had asked me ten years ago, before the defendant was ever examined, if Roger Tichborne was tattooed, I should have said yes without hesitation any time before he was abroad; but if you ask me whether I call to mind any occasion on which I saw those tattoo marks, I cannot; but I am just as positive about his being tattooed as about anything as to which one cannot remember when one saw it. It is just that deep impression I have had on the memory ever since Roger went away. I should have said so without hesitation; in fact, I can, if you will just let me mention it, on an early occasion after the arrival of the defendant"—then he is stopped because he was going into something not admissible in evidence. It is quite clear his impression was that he must have seen tattoo marks on Roger, although he cannot exactly remember what he saw.

Then Brand, the gamekeeper, speaks of an occasion when Roger Tichborne and he were out rook-shooting, and a rook fell into a row of trees, called Brandsworth Row, and Roger got over the palings, and while he was getting over, the palings gave way, and he fell among some nettles, and was very much stung. "*Q.* Having fallen among them, do you remember what he did?—He turned up his shirt sleeves and rubbed the nettle stings out with a dock. People generally say, 'in dock, out nettles.' They say, if you rub your hand with the dock, when stung, it will come out. *Q.* When he was rubbing the dock in, and rubbing the nettles out, do you remember noticing anything on his arm?—I saw some marks on his left arm, tattoo marks; what they were I cannot say. I know they were tattoo marks, some blue ink. The LORD CHIEF JUSTICE (to the witness): I understand you to say you saw tattoo marks on the left arm, but you cannot say what they were?—Yes." He is asked whether the shirt was buttoned, or whether it was unbuttoned. "It was buttoned at first. *Q.* Could you see the marks then?—Not till after he unbuttoned his shirt. When he stung his hand he unbuttoned his shirt; that was when I saw the mark. *Q.* You could see no mark while it was buttoned?—I did not look till afterwards. *Q.* While it was buttoned you could see no mark?—No. *Q.* Then



he opened the buttons in order to rub his arm?—Yes. *Q.* And you had a good view of it?—Yes. *Q.* Did you see what it was?—Yes. *Q.* What was it?—It was a tattoo mark, I know that. *Q.* A tattoo mark?—Yes. *Q.* What were the marks?—I cannot say what the marks were. I know they were tattoo marks. They were marked with blue ink. I could not see what they were. *Q.* You could not see what they were?—I could not, I never looked enough for that. *Q.* You have no idea?—I have no idea what they were. I never examined them to see what they were.”

Then we have an important witness in Mr. Scott, who was the infirmarian at Stonyhurst, and who says that on one occasion while Roger was at Stonyhurst, while they were talking to one another, Roger drew up his shirt and coat sleeves and showed him a tattoo on one of his arms. “*Q.* On which arm?—I am not quite certain, I fancy it was the left. Immediately I saw it I made a kind of exclamation, and said, ‘Who did that?’ And then he said, ‘A sailor in Brittany did it.’ Mr. SERJT. PARRY: Have you any memory at all as to what the marks were when you saw them?—I would not be positive, but to the best of my recollection, there was a cross, an anchor, and a heart. *Q.* Was that the only occasion you saw them, or not?—That was the only occasion. *Q.* Did you at any time speak to Roger Tichborne about them, do you remember?—I do not remember having done so. *Q.* Nor did you hear him speak about them at all, I suppose?—No. *Q.* Now are you quite certain you saw tattoo marks on Roger Tichborne’s arm?—Quite so; I am perfectly certain of it.” Then he is cross-examined as to the order of the marks. “Do you remember the order in which they were placed?—Not for certain. I am not speaking positively with regard to what the emblems were, but I am perfectly certain that I saw the tattoo marks, and he told me they had been done by a sailor in Brittany. *Q.* Then I understand you are not sure what the particular emblems were?—No, I won’t swear to that. *Q.* You did see tattoo marks?—Yes, that I can distinctly swear to. *Q.* I think you have told my friend there was a cross, anchor, and heart. You really now, on consideration, cannot say whether any one of those you saw——?—What I said before was, I was not certain of the emblems. *Q.* I thought that you named them. The LORD CHIEF JUSTICE: No; what he said was ‘I am not certain which arm; I fancy it was the left.’ I said, ‘Who did that?’ and he said ‘A sailor in Brittany.’ And then he says, ‘To the best of my recollection it was a cross, anchor, and heart.’ He was not by any means certain. Mr. McMAHON: Now, you have said you really have no recollection of what the emblems were?—I have a strong impression on my mind that they were what I said, but I would not swear to it. *Q.* Could you say whether there were any initials at

all?—I did not remark any.” That is not inconsistent with the statement of the other witnesses, and the statement of Lord Bellew, because if he saw this before Lord Bellew put the initials on the arm, he would see the cross, heart, and anchor, and no more. Lord Bellew says he does not think he did it until the ensuing year, 1847. This gentleman thinks he saw it when Mr. Berkeley was ill, but is not sure about it. That was in January, 1847, which may have been before the initials were added.

Then there is one of the Stonyhurst Fathers, the Reverend Father Rigby, who says he also saw it. “ Q. Did you notice anything particular on any occasion about Roger’s arm?—I did. Q. Will you say what you noticed, and how it was that you came to notice it?—What I noticed was that there was a tattoo mark upon his arm, and I observed, ‘ Roger, how could you do such a thing?’ Q. Did he say anything, or add anything?—He replied with a smile, and an inarticulate sound, as if expressive of some degree of confusion that I saw it; that was my impression. Q. Are you able or not to say upon which arm you noticed the mark?—To the best of my belief it was upon the left arm, but I would not swear that. Likewise, to the best of my belief, it was upon the forearm that I saw it; but that I saw it I am certain, and that I made that observation I am certain. Q. Do you recollect how you came to see it? how his arm came to be exposed so that you should see it? Do you remember the circumstances?—I do not. Q. You distinctly remember seeing it; that you have told us?—I distinctly remember seeing it, and I distinctly remember the observation I made, and I remember his reply. Q. Did you see sufficient of it to tell us anything of the nature of the mark, or simply it was a tattoo mark?—I could not swear to the nature of it. The LORD CHIEF JUSTICE: Could you tell us what was the colour of it?—It was bluish and livid. I have seen tattoo marks many times. Q. Was it the ordinary colour of tattoo marks?—It was, to the best of my belief and knowledge.” We thus have these two Stonyhurst people giving you evidence which clearly shows that so far as their recollection goes they did see marks upon Roger Tichborne, and that these were marks of tattooing.

A very important witness on this subject is Captain Manders, who says that when Roger Tichborne and he were at Portobello barracks together, in the early part of 1850, their rooms were on the same landing in the barracks, and close to one another. They were in the habit of seeing one another half a dozen times a day. “ Q. Do you remember seeing anything on his arm at any particular time?—I saw his arm in his own room, but not in mine. I very seldom went to his room, but I had occasion to go there once. Q. While you were quartered at Dublin you had occasion to go into his room?—Yes. Q. For what purpose?—I was going out hunting that day, and the

previous time I had broken my whip, and never thought of it, and we had a long way to go to cover, and I thought I would run in and borrow his whip. He was then standing before the glass with his shirt sleeves loose, brushing his hair with both hands, and when I rapped at the door he turned round, and on the left arm I saw the tattoo marks—the anchor distinctly. I cannot tell what else, because the arm was dropped immediately. Mr. JUSTICE MELLOR: Did you say the anchor particularly?—The anchor particularly. Mr. HAWKINS: The anchor, as I understood you to say, was the only distinct mark you recollect?—It is the only thing I do recollect. I saw various other things, but I do not recollect them; but the anchor was distinct on the lower part of the arm, about this part (showing it on his arm). Mr. JUSTICE LUSH: There were other marks?—Several other marks, but I do not know what they were. Mr. HAWKINS: I do not know whether you made any observation to him?—I made none at all; I merely got the whip from him and walked out.” Then he says he has thought very little of it since, but adds, “I know it passed through my mind at the time what opportunity that young man had had of having this done, because I always coupled it with people being at sea or on a voyage.” In cross-examination: “Q. Was it always present to your mind, or revived at all by any circumstance happening recently?—Well, I think about three years ago I heard some one talking about the tattoo, and I said, ‘Oh, I recollect.’ Q. Can you tell me who that some one was?—I cannot recollect. Q. Was it Mr. Bowker?—No, certainly not. Q. Anybody connected with the family?—No, I think it was the officer I was in correspondence with, but I could not be positive. Q. Who was that officer?—Major Phillips. Q. Were you in correspondence with Captain Fraser also on the subject of this trial?—Never: I do not think I wrote to Captain Fraser on this trial. Q. But you had many conversations with him about it?—I have met him up here, that is all. Q. You say you saw something you distinctly recollect, the anchor. Do you remember any other figures?—No, I can only tell you a good many other figures, but nothing struck me at the moment but the anchor. When I went into the room, the arms were in that position (and the witness held up his arms), with a hair brush on each side. When I came in, and asked him the question, he dropped the arm down, and therefore I only saw him that moment. Q. You think there were other figures besides?—Yes, I am sure there were. Q. About how many, do you recollect?—That I cannot tell. The anchor I am positive of, and my impression is that it was of a deeper colour than the others. Q. The other figures were deeper?—No; the anchor was the prominent figure both in size and colour.”

Then Colonel Bickerstaffe, you remember, gave us an account of



the attack Roger Tichborne had at Canterbury; how it was believed he was dying, and Dr. Moore, the assistant surgeon of the regiment, proceeded to bleed him. Strange to say, the evidence of this witness on this subject, which proves so very important, was only brought out on cross-examination. Dr. Kenealy says, "I observe my friend did not ask you, you saw his bare arms?—I did. Q. Did you observe any tattoo marks upon them?—I did. Q. What did you see?—I will tell you what really did occur. When I was asked about the thing I said he was not tattooed. I was asked by Mr. Bowker if he was tattooed, and I said no; and I never remembered anything about it. Q. Did you tell Mr. Bowker or any lawyers connected with this prosecution anything about it?—I did not; I never mentioned it to him. In fact, they never read it over, and I was not quite certain they took it down right, for it was taken in such a hurried manner that I was doubtful. Q. Whose evidence made you think of it?—I do not know whose it was. It was the cross struck me. The moment I read of the cross being on his arm it came then to my memory immediately. Q. But there was a cross round his neck?—Yes, it was having a cross round his neck, which, when I saw it on the arm, I thought was a superstitious idea of his—that he had got this cross put on his arm as a sort of amulet: that was what struck me at the time. Q. You connected the two together?—Yes; he was a very religious fellow, and I thought it was from a religious point of view he had got it on. Q. But you cannot tell me whose evidence you got it from?—No, I cannot. It was general, for I read all the evidence. Q. And the only description you can give is that there was a cross?—I know it was here (pointing to his arm), and there was a great deal of it. It was his left arm. It was close up to the wall, and it was towards the dusk of the evening when he was bled, and he was lying on his back. He had nothing on but a Jersey and a pair of drawers, and he had both sleeves rolled up, and his drawers were rolled up, to about here. Q. Did you observe anything on his other hand?—Nothing. Q. Nothing whatever?—Nothing whatever. Q. Did you see a splotch on his wrists?—No, I did not see anything except this cross, and the cross was at the top, whatever it was, and there was a lot of stuff underneath." On re-examination he is asked, "Are you perfectly certain in your own mind that you did see tattoo marks on Roger Tichborne's arm?—I am perfectly certain that I saw tattoo marks on Roger Tichborne's arm; on the left arm. Q. You have no doubt whatever about that?—No doubt whatever."

Then Major Bott, who was called for a different purpose, was cross-examined on this point as to whether he had not seen Roger Tichborne's arm bare during the time he knew him. "No doubt I have seen his arms bare frequently. Q. Now I will go a little further. Have you been asked whether he was tattooed?—At least

a thousand times; I have not counted them all, but I should think so. Q. Have you not always said that you never saw any tattoo upon him?—Do you want to know what I have always said? Q. I have asked you whether you have not always said you never saw any tattoo upon him?—I have always said I was under the impression he was tattooed, but I would not swear to it. Q. You have always said that?—I have always said that. Q. What gave you the impression he was tattooed?—I cannot answer that question. Q. Why not?—Because I do not know whether he was or not. Q. I want to know how you got the impression?—I got the impression; it was on my mind when the question was put to me if he was.” Then follows a long cross-examination as to how he got the notion, and about communications with Mr. Bowker, but it comes to this: he says, “It was my impression that he was tattooed. If you will allow me to say, I have been asked two or three times, and I have always said I could not swear to it. I would not say one way or the other, but I have mentioned my impression.”

Then Burdon is called, who attended him so often, and who attended him the last night he was at Paris. “Did you ever notice any tattoo marks, or anything of that kind about him?—I have a positive recollection of them at the present moment. When the defendant first arrived in the country I had no recollection of them. It had slipped my memory. I have been in the company of so many seafaring men, and as every one of them is tattooed, it slipped my memory; but as soon as I read it in the papers I remembered it perfectly well—the R. C. T. and the other things. I must have seen it the last night that ever I saw him. I was there when he changed his shirt to put on his night-shirt, and I put him to bed.” You remember he was ill that night, and Burdon put a poultice to his throat. On cross-examination he is asked, “Can you tell us when it was you recollected those tattoo marks?—The first time I saw it in print. Q. When was that? Was it when Lord Bellew was examined?—Some time ago I read it in the newspapers. Q. Was it ever in print until Lord Bellew was examined?—Not to my recollection. Q. Was it not his examination that made you think of it?—I forget whether it was so or not; I picked up a newspaper and read about the tattoo marks, and it flashed across my memory.”

Then Jeremiah Healey, who kept the racquet court at Clonmel, says he has seen him playing racquets, and after he has had his game of racquets he has seen him take off his flannels, and wash. “Q. When you have seen him do that have you noticed anything upon either of his arms?—I noticed a mark on one of his arms; I cannot say which. Q. About what part of the arm was it?—I think it was about here (pointing to the inner part of his arm). Q. What was the colour of it? Could you see that?—Yes, I noticed it was a

sort of bluish colour. Q. Did you ever see it so as to be able to say what it was?—No, I could not say what it was. Q. Are you quite certain that you saw it?—I am quite certain I saw a mark on one of his arms. Q. On one of his arms?—Yes, quite certain. Q. A bluish mark, you say?—Bluish. Q. Do you know whether you have ever seen tattoo marks to examine them?—No, I have never examined them. Q. Have you seen them?—Yes.” Then he speaks of having seen a splotch; but he says he cannot remember what the marks were. “I have just seen him washing himself at a stand. I was not so close that I could notice. I have seen him raise up his flannel shirts and wash himself, and then I saw him put on a cotton shirt and a linen shirt over it. Q. Have you seen him do that more than once?—Yes. Q. How often?—I have seen him do so, I suppose, a dozen times. Q. How far off were you?—I was as far as from this to the jury. Q. What?—Yes, I recollect bringing him a ewer of water, and that is the first time I noticed it. Q. How near to him?—When drawing a ewer of water, as near as I am to this Sir Roger here. Q. On that occasion you were so near as that?—Yes. Q. And then did you take so little notice that you cannot tell us anything about the mark?—No, I do not take much notice of gentlemen. Q. In fact it was no part of your business to take notice of those little marks?—No. Q. Do you remember what part of the arm it was?” Then he describes where he thinks it was. “You say it was blue; could you say whether it looked like blue ink?—It was not so dark as blue ink, I think. Q. Was it a sort of light blue?—It was blue. Q. Did it appear as if it was a mark that was disappearing?—I do not know. I could not tell you that. Q. You saw it several times during the six months: when did you see it first? By the JURY: He said he has seen it several times. Mr. McMAHON: Well, if you are satisfied, I will not ask it. The WITNESS: I could not tell you when I saw it. Mr. McMAHON: When did you see it first?—I could not tell what date. Q. What was the distance of time between the time you first saw it and the last time you saw it?—I could not say. Q. Can you tell me this: Did you see any difference in its distinctness between the last time you saw it and the first time you saw it?—No, nothing. Re-examined by Mr. HAWKINS: You say you took no particular notice of it; but are you quite certain you saw a mark on one of his arms?—I am quite certain I have seen a mark on one of his arms. Q. That you are quite certain about?—Quite certain.”

There are, I need scarcely remind you, two very important witnesses from Paris, Chatillon and his wife. On the last day Roger Tichborne ever spent in Paris he went to call on Chatillon, his old tutor, to take leave of him. Chatillon and his wife were about to have their déjeûner, and begged him to stay, and he did so; and



just before they sat down to breakfast he was talking to Madame Chatillon, and he gesticulated a little, and in doing so threw his sleeve back, and she saw some blue marks on his arm ; and tattooing not being so frequent in France as it is in this country—where, from our sea-going propensities, we are so much more thrown into the company of sailors, so that many gentlemen are tattooed, although it is supposed generally to be confined to sailors and people of that sort—she begged her husband to ask Roger what the marks were, being curious to know, and the husband did so ; and the Chatillons tell us that Roger turned up his sleeve and showed them the marks. They both agree there were the marks of the cross, anchor, and heart, and the initials besides. Chatillon was asked to draw a representation of what was on the arm, and he gave one which was correct as regards the three emblems, but not so as to the order or exact position in which they were placed. His wife corrected it, and showed where the husband was wrong, and she gave it exactly as in point of fact it existed, according to the evidence of Lord Bellew and the other witnesses. The substantial part of the thing is the same, that they both saw these emblems tattooed upon his arm.

Besides these there is the evidence of the Abbé Salis, who says : “ I remember perfectly well having seen a mark upon the arm of Roger Tichborne ; it was a tattoo mark. This must have been in 1850 or 51, when Roger came to Paris. After dining at Mr. Tichborne’s we went into a side room. As soon as we got into the other room Roger at once pulled up his sleeve and showed me the mark. I said to him, ‘ Oh, Roger ! how could you do that ? ’ in disapproval, and he at once put his sleeve down, but I saw the mark. I could not examine it, because immediately after I had shown my disapproval Roger pulled his sleeve down. I cannot say exactly whether it was the right or left arm ; but I think it was the left. He showed me his arm so rapidly that I cannot give any other explanation. It was a blue colour.” In cross-examination the Abbé states “ that it made a very disagreeable impression upon him”—as I have observed, in France it is altogether unusual—“ and that Roger never spoke of it again. He had seen tattoo marks before. He never mentioned it to Lady Tichborne, because it would have been very unpleasant to her : he mentioned the fact for the first time when he came to London in 1871.”

Gentlemen, lastly, and as the final evidence, there is the dying deposition of Lady Doughty. She says : “ I remember that he had tattoo marks : there was a cross, a heart, and an anchor. There were also initials. I saw them more than once. He said the cross, the heart, and the anchor had been done by a sailor on the coast of France. He said the initials had been done by a young man at Stonyhurst afterwards.”

That is the entire body of the affirmative evidence on that subject, and the question is whether it does not strongly and abundantly confirm the statement of Lord Bellew with regard to the part he took in this tattooing, and as to that which existed on Roger's arm when he first saw it. Of course if Roger Tichborne was tattooed, there is an end to the defendant's claim to be Roger Tichborne. How, then, is this evidence to be overcome? The learned counsel for the defendant admits that he cannot gainsay the testimony of such a body of persons; that he cannot ask a jury to believe that Lady Doughty in her dying declaration was stating that which she knew to be untrue; or that Colonel Bickerstaffe and Captain Manders and people of that sort would come forward here to say they had seen tattoo marks on Roger Tichborne's arm if they had not seen them. Then how is the difficulty to be got over? Because the learned counsel admits, what, indeed, it must have taken more than his boldness to deny, that if Roger Tichborne was tattooed the case of his client is at an end. Unable to deny that these witnesses have seen the marks on Roger Tichborne's arm to which they have spoken, he is driven to seek some explanation whereby he can admit their evidence to be true, and yet ask you to believe that there was no reality in the marks they saw. His suggestion is this: that Roger Tichborne, not being tattooed, amused himself with imitating tattoo marks on his arm, and finding that the exhibition of these tattoo marks on his arm caused surprise, and in some instances annoyance, to the persons to whom he showed them, had recourse to a sort of fictitious tattoo, something which looked like tattoo, but which in reality was not tattoo; that by some coloured pencil, or paint, or pigment, or some contrivance or other, he drew those emblems on his arm, in order to surprise or annoy anyone he wished, and then quietly rubbed them out until he wanted them for the next occasion. That is the theory propounded for your adoption. The strange thing about it is this, that it always occurs to him to draw exactly the same thing, and always on the same part of the arm. It is always on the same part of the arm, and always a recurrence of the same emblems and letters. But there are one or two instances of the exhibition of these marks in which the circumstances are such as would lead one to the conclusion that it could not have been done for any such purpose. I refer to occasions on which he was taken by surprise. When Captain Manders goes into his room in the morning he is dressing, he is brushing his hair with two brushes, and his hands are up. The consequence is that from the exposure of this part of the arm Captain Manders sees these marks upon him. He is taken by surprise, and Captain Manders sees the marks. He could hardly have got up that morning and tattooed himself for the purpose of playing a trick on some one in the after part of the day.

Oh, says the learned counsel, perhaps he had done it the night before for the purpose of amusing somebody. Is that at all a probable thing? Do you think he had fictitiously tattooed himself the night before and had forgotten to wash it off, and had not washed it off that morning? Besides, though he might have amused himself in this way at the expense of the ladies at Tichborne, can we suppose he would do it with comparative strangers at Dublin? Again, he is taken suddenly ill at Canterbury; he is supposed to be dying, and they want to bleed him. His sleeves are turned up; the surgeon is using his lancet; he calls Colonel Bickerstaffe's attention to the marks on the arm, and says, "Look at this arm." Colonel Bickerstaffe says, "I recollect perfectly well, it struck me at the time, as he had a cross, a religious emblem, and an amulet tied round his neck, that he had the cross tattooed on his arm from superstitious motives." Of course on that occasion Roger Tichborne was taken entirely by surprise. He did not know he was about to be taken with this seizure, and of course had not prepared his arm in order that the surgeon might see it when he came to bleed him. Can we suppose that before Captain Manders or Colonel Bickerstaffe saw these things he had been painting his arms for the purpose of exhibiting them? Again, is it likely that on all the other occasions he had painted his arm for the purpose of showing it to somebody? One could entertain that notion as just possible, if there was any foundation for it in the evidence, as long as he was staying at Tichborne among the ladies, or with Mrs. Nangle, or Lady Dormer; he might do it for the purpose of seeing what effect it would produce on those persons. But when he was in his regiment among men, can we suppose he would play this sort of game on his brother officers? It would not make men frightened, or make an officer say, "How could you do that? it is a horrid thing." Can we suppose that he had any object in making Mr. Fitzgerald, whom he met for the first time, or Mr. Scott, the infirmarian, or Brand, the keeper, or Healey, the man who kept the racquet court, believe he was tattooed, when in fact he was not? Or that each time he went to bathe with Mr. Reginald Talbot he first painted his arm? Four of the witnesses, Father Rigby, Brand, and the Chatillons saw it, like Captain Manders and Colonel Bickerstaffe, when Roger Tichborne was taken unawares. Are we to suppose that on these occasions also there had been a previous painting of the arm in imitation of tattoo marks? Yet, unless you accept that solution, it would otherwise seem to be an insuperable difficulty. Then there is the very remarkable fact of his telling Lady Doughty that the initials had been done by a young man at Stonyhurst, coinciding herein precisely with the statement of Lord Bellew. Can we believe that he made sham tattoo marks on his arm for the purpose of founding that statement?

It is perfectly true the Counsel for the defence were enabled to call a



considerable body of witnesses to say they had not seen tattoo marks on Roger Tichborne's arm. Some of them had had more or less opportunities of seeing it; and the argument is that if Roger's arms had been constantly and permanently tattooed, these witnesses, having the opportunity of seeing his arms bare, must have seen the tattoo marks. They did not see any tattoo marks; and therefore, says the learned Counsel, although I cannot dispute that many persons did see what they supposed to be tattoo marks, they were not tattoo marks, but imitations of tattoo marks, temporary only in their nature, washed out as soon as he chose to get rid of what he had painted on his arm, and which, therefore, left the arm in its natural condition, so that when other witnesses saw it there was nothing on it. It is my duty to call your attention to the evidence, and place it before you, and then you will have the whole matter before you, and it will be ripe for your judgment as certainly a crucial question in this cause.

First there are the witnesses from Hampshire and its neighbourhood, and then there are the Carabincers. I divide them into those two bodies. First, there is Guy, who saw Roger Tichborne grubbing up the old oak root, or "moor," as they call it in that part of the country. He saw him with his jacket off and his arms bare several times, working away at this oak stump, and he never saw any tattoo. He used to pass by and see him working away with his grubbing-axe, and never saw any mark. There are two or three other witnesses who say the same thing. There is a man of the name of Bailey, a horse-breaker, who, when Roger Tichborne was helping Colonel Greenwood to build up the cairn which he built over the place where his horse was buried, saw him wheeling the stones in the wheelbarrow, and he says his sleeves were turned up and he saw no marks. He passed there more than once on a similar occasion—that is to say, with two or three horses, which he was exercising or training—and saw him with a dark guernsey on and his sleeves turned up, and saw no marks. He saw him again at work grubbing up the tree in Tichborne Park in the summer of 1848 or 1849, in one or other of those years, and saw no mark upon his arm.

Then there is a man of the name of Lillywhite, who on one occasion saw Roger Tichborne grubbing up the stump, and says he had his shirt sleeves folded above his elbows. The axe broke, and Roger sent him with it to the smith's to get it mended, giving him half-a-crown to pay for it, and on the man's return, he told him to keep the balance, amounting to eighteenpence. Roger's hands got blistered, and he asked the witness to finish it, which he did. He also speaks to having seen Roger with his arms bare when tickling trout in the river. He did not see any tattoo marks. Then there is Henry Noble, the bailiff, who in like manner speaks of having seen Roger Tichborne several times working away at this old oak stump or moor,

with his sleeves turned up. He would be working away at it three or four hours at a time, and the witness, as he passed the place, would stand by looking on, and he never saw any marks of tattoo upon his arm.

Then there is William Mansbridge, who was a sort of under-keeper. As a boy he went out shooting rooks with Roger. He says he has seen him making bullets when at Tichborne. On such occasions Roger pulled off his jacket, and tucked up his sleeves to his shoulder, and he never saw any tattoo marks upon his arm. Then there is a person of the name of Ann Mines, who was a housemaid in Lady Doughty's service for two years from 1848, and she says, what strikes one as somewhat odd, that he was in the habit of coming into the kitchen to wash his hands when he came in from doing anything outside. He used to come into the kitchen and wash his hands there. She has given him water for the purpose; he tucked up his shirt sleeves to wash his hands; she herself on one occasion tucked up his sleeves, because there was something the matter with one of his fingers, and she saw no tattoo marks upon his arm.

Thomas Muston is the next, and he certainly is a strong witness. He was in the service of Roger Tichborne for some time from the beginning of 1849, when Roger stayed at Tichborne after leaving Stonyhurst, and remained in the service until the commencement of 1851. He deposes that he has seen him undressed; he has been present in the room when he has been washing and dressing, and has handed him his shirt, and he never saw any tattoo marks. He states what certainly is not consistent with the evidence of the other witnesses, that Roger never wore any flannel waistcoat or vest of that description underneath his shirt, whereas we hear from other witnesses he did. Then there is William Hewitt, formerly servant of Mrs. Hopkinson, and who was at Knoyle when Mrs. Hopkinson was staying there. He tells us Roger Tichborne used to amuse himself with the boxing-gloves, and used to spar in the harness-room over the stables, and he has seen him with his shirt sleeves tucked up as high as they would go, and sparring with his arms bare, and he never saw any tattoo. He is quite sure that he has himself twice sparred with Roger in the harness-room, some of the men being present, and Roger had his shirt sleeves tucked up, so as to expose the arms; but he never saw any tattoo marks. He further says he has often seen him washing, and gone into his room while he was washing, and he never saw any tattoo marks. Then there is a man of the name of Budden, a carpenter and joiner, who was employed at Upton House in 1848 or 1849. He remembers Roger Tichborne coming to him to borrow a tool. His arms were bare, and there were no tattoo marks on them. He says this was either in 1848 or 1849; but it could not have been 1849, because Roger Tichborne was not at Upton in that year. It may have been in 1848, and Roger Tichborne may have gone into

the carpenter's shop and asked for a tool, and taken it away; but he may very well have gone into the shop, and with his arms bare, and yet not have exposed the under part of the arm. Then Mrs. Legg, the washerwoman, tells a somewhat curious story. She says she used to go backwards and forwards to the house at Upton while Roger Tichborne was staying there in November, 1852. She washed for him; used to go to the house at least about three times a week; she has seen him in the butler's pantry, to which she went, with his arms bare, at least a dozen times, and saw no tattoo marks. She is naturally asked how she came to see him with his arms bare in the pantry. It is not a place where a young gentleman in his position would be likely to exhibit his arms in a state of nudity. She explains that by saying there was a sink in the butler's pantry, at which he used to clean his gun, and she has seen him cleaning his gun barrel there time after time. It strikes one as rather an odd thing (one does not wish to say anything in disparagement of the good woman), that a man who had a gamekeeper, besides other servants, should be cleaning his own gun. It is a thing a young fellow who has nobody to do it for him must do for himself, but not the sort of thing that a gentleman generally does for himself when he has servants to do it. It strikes one as odd that the washerwoman should be so often going in and out of the pantry, and should have seen him so frequently as she represents, cleaning his own gun after he came in from shooting. But even supposing it was so: might it not easily happen, if she only saw him with his arms bare while he was cleaning his gun, that she may not have seen all the arm? We must not forget that the part on which these things were tattooed was the inner or under part of the arm. Generally speaking, you hold your left arm in such a way as not to show the inner or under part of it. It is not as if you held the arm in such a direction as to exhibit this part of it. The general position of the arm is level with the body. A man who is wheeling a wheelbarrow may not expose the under part of the arm as he is using it; and though, when using an axe, he would expose the inner part of the right arm with which he wields an axe, he would not expose the inner part of the left. He would raise up and expose the right hand and arm, but the inner side of the other arm would be covered. Therefore, it does not follow that these witnesses must necessarily have seen anything on the arms, because the arms happened to be bare. In like manner the woman who says she saw him working at his gun barrel with his arms bare may be right; but the inside of the left arm would be next to the body, and she might be there and see nothing. More especially if it was by candle-light, and he was standing near the sink, it is possible she may not have seen the marks, and yet the thing may have been there. Because one would desire—if you are satisfied with the statement of Lord Bellew and the witnesses who come to confirm him, that



there were these tattoo marks—one would anxiously wish to see some solution whereby you could account for the evidence of the witnesses called here for the defendant, who say they had full opportunity of seeing him, and that they did not see tattoo marks. Then there is this remark, which is as old as courts of justice themselves: that affirmative evidence of a fact which persons say they have seen, supposing always that there is an equal probability of truthfulness on both sides, is infinitely stronger than the negative testimony of persons who say they did not see it. For the latter may err from want of accuracy of observation, or from want of opportunity of observation, or it may be that the thing having been seen has entirely faded from the recollection; and no longer remembering a fact, but knowing they had an opportunity of seeing it, persons jump to the conclusion that they did not see what they possibly may have seen, but which they have forgotten. Therefore we always consider that the affirmative evidence of a fact (unless a witness is speaking falsely, and says he saw a thing when he did not), is stronger than the evidence of a person who says, “I did not see”—unless the opportunity of seeing is so remarkable that it is impossible the person could have seen it, and not observed it, if the thing was there. For instance, if a surgeon took a man’s arm to bleed him, and it was a question whether he saw a tattoo mark immediately below the spot where he was about to insert his lancet, and he were to come here and say, “I will undertake to swear there was no tattoo mark on the arm,” that would be one thing; but the cases we are dealing with scarcely amount to that.

Then there is Charlotte Grant, who says Roger Tichborne used to come in with his arms bare on returning from fishing in the moat. She says, “He has come into the kitchen, and asked for a drop of water just to wash the dirt from his hands before he has gone to his room. Q. He frequently came in without his coat and asked for water?—Yes, just to wash the dirt from his hands. Q. Was it you gave him the water?—I have supplied him with water. Q. Did you ever on any of those occasions see any tattoo marks upon his arm?—None whatever.” She says, “I must have seen his arms bare half a dozen times.” A material question arose as to when this was. Her answer was, “I cannot give you dates except in this way; it was during the time I was kitchen-maid. I was in attendance on Miss Doughty and her governess in the school-room until the end of 1849. I went into the kitchen at the end of 1849, therefore it must have been after the end of 1849.” Then she is asked, “How often will you say that in the year 1850 you have seen him come into the kitchen in the way you have described with his arms bare?—Half a dozen times. Q. In 1850?—In 1850.” She sticks to the date. She says it was in the summer season, “when they were trouting;” she was kitchen-maid

at the time, and gave him water from the sink in the kitchen, and saw him with his arms bare, washing. To this I am bound to tell you there is a very short answer—he certainly was not there. He never was at Tichborne in that year, in the summer, or in the trouting season—extending the trouting season as far as you please, even to a period when nobody ever thinks of fishing for trout. Taking the whole of the period of trout-fishing, Roger Tichborne never was at Tichborne at all; therefore the statement that the witness made must be untrue. She fixes the date, as I said, by the time she went into the kitchen, which took place at the end of 1849. She is quite precise, and does not allow herself to be driven from the position of 1850. Now, Roger Tichborne was with his regiment, at Dublin or Cahir, from February, 1850, to the Christmas in that year. He never was at Tichborne in the summer time after 1849—at which time this witness was not in the kitchen—except for the two days in June, 1852, when there is no reason to think he went fishing, and when this witness was no longer in the service.

Then comes Mrs. Neale, the waitress at an inn at Melksham, who says Roger Tichborne came there in a dog-cart from Bath in 1848, and there was an accident—they had upset the dog-cart. He went into a room to wash his hands; she took him some hot water for the purpose. She found him with his coat and waistcoat off, his sleeves tucked up and ready to wash; she had thus an opportunity of seeing his arms bare; and she comes here, having seen his arm on this single occasion, after an interval of twenty-four years, and declares there were no tattoo marks upon his arm. You will know what weight to attach to such evidence.

Then comes a witness of a more serious character—that is Bogle. He is asked, “Did you see him with his arms bare?—I cannot say I ever saw him with his arms bare, but I have been in the room on two or three occasions at night when they were all gone to bed, and sat there with him when he has had his night-shirt on, and his braces tied round his waist to keep his trousers up, smoking, and have sat talking to him. *Q.* On those occasions could you see enough of his arms to let you know whether they were tattooed or not?—Yes, I could see his arms” (he does not answer the question in terms), “for every now and then he used to rub his arms up and down—one arm and then the other—but I could see no tattoo marks upon him. *THE LORD CHIEF JUSTICE:* He used to rub his arms up and down?—Yes; he sat talking and smoking, and every now and then would rub one arm and the other. *Q.* Do you say what dress he was in—his night-dress?—His night-shirt. *DR. KENEALY:* Is that after he went in the army?—Yes, when he was in the army. *MR. JUSTICE MELLOR:* Do you mean he took up the sleeve of his night-shirt outside?—No, he was sitting smoking, and he would occasionally rub the arm, like this (describing it), and then the other.

Q. But not the sleeve?—The sleeve was not buttoned. Q. Do you mean he took the cloth and rubbed it so?—No; he rubbed his arm, not the cloth. The LORD CHIEF JUSTICE: You mean under the cloth?—Yes. Q. What was his dress?—His night-shirt. Q. Nothing else on?—Nothing else on but his night-shirt. Mr. JUSTICE LUSH: No flannel?—No flannel, my Lord. The LORD CHIEF JUSTICE: He did not wear flannel?—I believe he used to wear flannel. I have seen him out shooting and fishing several times, and he used to have. Q. But do you mean at night he had no flannel?—No flannel at night; he would take it off. Mr. JUSTICE MELLOR: Had he not a dressing-gown as well?—Nothing but a night-shirt, and his trousers tied round his waist with his braces. Dr. KENEALY: And his shirt unbuttoned?—His shirt unbuttoned, smoking his cigar, and I have sat by his side. Q. Could you see the fore part of his arms when he did that?—Yes, I could see the fore part of his arms up to the elbow occasionally when he rubbed his arm. Q. But you say you saw no sign of tattoo?—I saw no sign of tattoo at all about him.” Then he is asked on cross-examination, “When did you first of all recall your recollection to these three evenings in the summer of 1851, when you saw him rubbing his arms? When did you first of all think of that?—I thought of it when I heard the tattoo marks mentioned. I said if he was tattooed I ought to have seen it. Q. You were examined at the last trial?—I was not examined on the tattoo. Q. Be careful, Bogle. You were examined after Dr. Lipscombe had been examined?—Yes. Q. You were in court when Dr. Lipscombe was examined?—Yes. Q. Did you hear any question put to Dr. Lipscombe about his having seen ‘R. C. T.’ on Roger’s arm?” So that it appears that Dr. Lipscombe was examined about having seen “R. C. T.” on Roger Tichborne’s arm; and it is certainly a remarkable fact that Dr. Lipscombe, who was called on the last trial and, as it appears, examined as to the very important fact of his having seen these initials on Roger Tichborne’s arm, is not called on this. He could have told you whether he ever did see “R. C. T.” on Roger Tichborne’s arm, and whether he has made any statement about it one way or the other. That gentleman is one of those who have been left out on the present occasion.

Then there are several witnesses from the Carabineers, who say they had the opportunity of seeing tattoo marks on Roger Tichborne’s arm, had there been any, but they saw none. There is a man of the name of Raynes who saw him spar on one occasion, and saw his arms bare. He is asked whether he was tattooed, and he says, “Not to my knowledge.” He does not remember who it was sparred with him; some other officer. The witness was called to tuck up his sleeves. Then there is Mrs. Sarah Ella, the wife of one of the men in the regiment, now employed as foreman of highways at



Nottingham. She says when Carter was not in the way, Roger Tichborne would come to the kitchen to her to fetch water to wash with, having his arms bare; she has seen him with his arms bare; sometimes has taken water to him; he has met her in the passage and taken the water from her, and she never saw any tattoo marks. According to her, he always seems to have come on these occasions into the passage with his arms bare. Then there is a man of the name of Robinson, also in the Carabineers, and who speaks of Roger playing skittles on the green inside the barracks. He says the officers and men were playing skittles. He saw his shirt sleeves turned up, but he never saw any marks. Margaret Hornbybrook says she was in the service of Captain Campbell. She has seen him washing or wiping his hands, coming out into the passage, where the gentlemen were talking to one another, and he was drying his hands with a towel. She never saw any tattoo marks on him, although near enough to see if there had been any. Then there is Colonel Norbury, who says, "I have seen him with nothing on as regards the upper part of his person, but a jersey, an under-dress. That I remember perfectly; but from the terms one was on there, I feel sure I must have seen him on other occasions with his arms bare. Q. Did you see any marks of tattoo?—Not to my recollection." Colonel Norbury speaks more especially of an occasion when the officers went into his room late at night, playing some tricks upon him, and pulling him out of bed, one of their stupid practical jokes. As regards the particular occasion Colonel Norbury speaks of, at that hour of the night, when they were all in confusion, and tumbling about, trying to get the locket from this young lad, with, I dare say, not very much light in the room beyond any candles which may have been brought in, it is quite possible, I should think, that Colonel Norbury may have seen his arm bare, and not have seen anything on it. Then there is William Bird, who says he went to the station with Roger's father when the father came to Cahir on a visit; that the father was going to give him a sovereign, but he had not change, and he desired him to go back to his son and tell him to give him a sovereign. And he says he went back and found Mr. Tichborne washing, and had to wait until he went to his drawer to get the money. He found he had only a note, which he desired Bird to get changed, but the latter told him it would do as well another time. "On turning round to hand the note to me," says the witness, "his arms were bare; his shirt sleeves were turned up above the elbows, and there were no tattoo marks on his arm. Q. Did you see both his arms?—I saw both his arms. Q. How was he standing towards you when he was handing you the note?—He was standing in front of me, with the towel in one hand and the note in the other, with his face towards me. If he had been tattooed I could not have

missed seeing it." But here there might be a question whether he was holding the towel in his right hand or his left; if in the left hand, he would have exhibited the right arm with the note, and the witness might not have seen the inner part of the left. The LORD CHIEF JUSTICE: "We have not got what time of day this was?—It was in the morning, between ten and eleven o'clock, after Mr. James Tichborne had left the barracks. Dr. KENEALY: Was that the only occasion on which you ever saw Mr. Roger Charles's arms bare?—I saw his arms bare many times, several times, but that most impressed itself on my mind on account of the business I went on. The LORD CHIEF JUSTICE: What made an impression on your mind?—His arms being bare and no tattoo marks. Q. You mean at the time you are speaking of?—Yes. Mr. JUSTICE MELLOR: You saw no tattoo marks: you did not know anything at that time about tattoo marks?—No, I never heard anything about it, my lord. The LORD CHIEF JUSTICE: Now you say you went again?—I went again two or three days afterwards. Dr. KENEALY: About what time?—In the morning, between ten and eleven, towards ten o'clock, when Mr. Tichborne came from drill. I went for the purpose of getting the sovereign from him. He was then washing his hands, with his sleeves turned up, and he said that he would give me the sovereign, but I must give him a receipt for it. I would not give him a receipt for it, and he said he would not give the sovereign without I gave a receipt." So the witness says he never got the sovereign from that day to this. Now we know this man must be stating that which is either untrue or inaccurate, and it shakes one's faith in his evidence. There is no doubt Roger accompanied his father to Dublin; went away at the same time with him from the station, and did not return for two or three days; and therefore when this man positively asserts that Roger did not go with his father, and that he went back to the barracks on the morning the father started and found Roger there, he must be stating that which is inconsistent with the truth.

Then there is a witness of the name of Mundy, now the assistant warder of Chatham Convict Establishment. He says that Roger being lieutenant of the troop at Canterbury, and the captain being away, it was necessary to have his signature to carry out certain things in the regiment, and that he has gone to his quarters to procure it. "Have you ever seen him washing himself?—I did on several occasions, after returning from church parade. Q. They change their uniform after that, I believe?—Yes. Q. They go in full uniform?—Full dress. Q. And put on undress uniform?—Yes, change to stable dress. Q. Did you see his arms bare?—I did; bare up to the elbows. Q. Did you ever see any signs of tattoo upon his arm?—No." Then there is a good deal of cross-examination of this witness, as of others, called for the same purpose and speaking to

similar facts, as to the position of the washhand-stand, and as to Roger Tichborne's position, so as to see whether the witness commanded the view of Roger's arm when bare. It is necessary to consider the position of the hands when you are washing. The towel being held in the right hand, that hand may be raised, and the left hand may be down. A man who sees another under such circumstances may truly say I saw both his arms bare; I saw no tattoo marks. But query, did he see the inner or flat part of the arm on which alone the tattoo marks were? In the action of washing the hands the inner part of the arm may not be exposed. In wiping the body or hands, the same thing may happen.

William Try, formerly in the Carabineers, where he was an officer's servant, says he has seen Roger Tichborne playing at cricket and quoits: he also says he has seen him with his shirt off, or with his shirt sleeves turned up, when he was in his room washing for dinner. According to the evidence of these witnesses, Roger seems to have been perpetually washing his hands, and everybody seems to have caught him washing his hands. "I have seen him," says the witness, "with his arms bare when his shirt was off, and no tattoo marks. I do not believe there were any tattoo marks." Then there is a good deal of cross-examination, not at all improperly applied, to get from this witness what he had to do in Mr. Tichborne's room, he not being his servant, or the servant of any officer who sent him there. That is not very satisfactorily explained. However, he says he had occasion to go to Roger Tichborne's room from time to time, and had an opportunity of seeing him. Then there is a man of the name of Davies, who says Roger Tichborne bought a fighting-cock of him, and he was desired to go to his room to be paid three half-crowns, the price of this cock. He goes, and he too finds him with his shirt off, and what he calls his cinglet. "He was washing, and he was staring me in the face, when talking to me, all the time, for about a quarter of an hour or twenty minutes. The LORD CHIEF JUSTICE: Do you mean he was washing all the time?—He was talking and washing, and he was dressing, I suppose. He was dressing to go to mess at the time. Q. I want to know whether he was washing all the time?—He was washing for about ten minutes, or a quarter of an hour. Dr. KENEALY: Did you see any tattoo marks on his arm?—He was bare, as bare as my face. I am tattooed though a little bit there (his hand). I am tattooed here, and if there is a medical man who can take that out without leaving a mark on it, he can try the operation. Q. Were there any marks on Mr. Tichborne's arm?—None at all, or else I am certain I should have seen it. Q. Did you see both arms?—I saw both arms, both right and left. Q. How often do you say you have seen that?—Never, only once to the best of my knowledge, to say I see his arms



bare. He used to be riding by the side of me every day; but as for me to take an oath he was not tattooed, I cannot, only on this one occasion." That was on the occasion when he went to get paid for the fighting-cock. Then there is the same inquiry as to the position in which Roger and the witness stood relatively to each other.

Then John Lessweare, the old trumpet-major and postman, says he used to go and deliver the officers' letters in the morning, and he says he has been to Mr. Tichborne's quarters and found him dressing and washing, and he has seen him with both arms bare. "Q. If he had been tattooed on either of his arms do you think you must have seen it?—It was such an unusual mark on any officer in the regiment that I must have seen it in the number of years I was attending them with letters, and I never saw such a thing on any cavalry gentleman. Q. You say not a single gentleman in the Carabineers ever had it?—Not that I ever saw, and I would know if I did see it. Q. You never did?—I never did." George Wild, who was military servant to Mr. Johnson, an officer in the Carabineers, has seen Roger Tichborne playing at racquets and cricket with his arms bare. "Q. Have you ever helped to tuck up his shirt sleeves?—I have tucked up his shirt sleeves in my master's room when they used to have a set-to at boxing. I have tied on the boxing-gloves for him. Q. They often used to have a set-to, I believe, those two young gentlemen?—They were on one side of the barracks together, and I lived in the building along with them, in the kitchen in the same building. Q. Mr. Johnson is not alive now?—No. Q. When you have seen his arms bare, and tucked up his sleeves, and all that, have you ever seen any tattoo marks on his arms?—He was no more tattooed than I am, and I am sure I have no tattoo marks on me. He never was tattooed in the world while he was in the Carabineers." Sergeant Brittlebank says he was formerly orderly sergeant in the Carabineers, and when Mr. Tichborne was orderly officer used to call upon him. On one occasion when he was in the room Tichborne was washing himself. The witness had collected the stable reports for him. Roger Tichborne excused himself for being late, as his servant had forgotten to call him. He was wiping his hands, and his arms were bare. This witness, too, says there were no tattoo marks. George Ella, of the Carabineers, remembers his coming to the kitchen for hot water. "Had he his arms bare then?—I dare say he had. Q. Had he?—I saw him sometimes with his shirt on. I saw him both ways—come to the kitchen in his regimentals. The LORD CHIEF JUSTICE: The question applies not to the regimentals, but when he came, as you say, without his regimentals?—Yes, he used to come, sometimes with his shirt sleeves tucked up, and other times he would come with them down. I never saw any marks upon his arms." Then there is

Timothy Marks, who speaks of a foot-race at Cahir, in which some of the officers took part, and among them Roger Tichborne; they were all stripped for the race, with their frocks off. “*Q.* How about their arms?—I recollect Mr. Tichborne’s shirt sleeves were turned up, rolled up as far as his elbows, and his overalls were secured with his braces. *Q.* Did you see his bare arms?—Bare to the elbows. *Q.* Was he tattooed?—Had there been any marks on his arms I must have seen them. *Q.* Then was he tattooed?—No.” On cross-examination: “*Q.* Where were you standing? at the starting-point or the winning-point?—I was standing at the winning-point, which was next to the colonel’s quarters. *Q.* Roger, you say, had his shirt sleeves tucked up to his elbows on both arms?—Yes. *Q.* Had the other persons who were running their shirt sleeves tucked up to the elbow?—They were stripped more or less. *Q.* My question is, had the other persons who were running their shirt sleeves tucked up to the elbow on both arms?—I believe they had. *Q.* Will you swear they had?—No.” Here it strikes me that when a man’s attention is fixed on three or four people who are running, and he is taking in the whole view of the race, not looking at any particular limb of any one who is taking part in it, marks on a man’s arm might very easily pass unnoticed, unless his attention were specially directed to it. It must be borne in mind, too, that Roger Tichborne was a man of very sallow complexion, on which tattoo marks, unless made very strong, might very likely pass unobserved, whereas they would not pass unobserved in a person whose skin was fair. Lastly, there is a person of the name of Ratcliffe, also in the Carabineers, who says when Roger’s servant Clarke, who was an old man, and not an active servant, was out of the way, he has had to go into his room, or has gone there to help Clarke. Thus he has been in Mr. Tichborne’s room, and in like manner found him washing, and this man, as well as the others, says he saw him with his arms bare and did not see the tattoo. He seems to have been perpetually washing, and all these witnesses somehow or other, having nothing to do with him as servants, not being in his service, go and find him washing with his arms bare.

Gentlemen, I think I have now gone through the whole of these witnesses. Certainly there are a good many of them who say they had opportunity of seeing Roger Tichborne’s arms bare; and having had the opportunity of seeing his arms bare, never saw any tattoo marks. That is negative evidence against positive evidence, and you must judge whether those to whom the arm was exhibited for the express purpose of showing those tattoo marks, or who saw them when Roger Tichborne was taken unexpectedly, are more likely to be right in saying they have seen them, than those who, having had the opportunity, it is true, but perhaps not so good an opportunity, come here and say they did not remark it. The superiority of positive

over negative evidence has long been matter of observation. A thing may be, yet this or that individual may have failed to see it, or, having seen, may have forgotten it. But the man who swears he actually saw it, if he is speaking truthfully, unless he has suffered himself to be deluded, cannot well be mistaken. There is only this to be said: if you adopt the hypothesis of Dr. Kenealy that these were fictitious tattoo marks made by Roger Tichborne for the purpose of deceiving people, then the two classes of evidence can be reconciled. The affirmative and negative evidence would go together and would establish this, that there were tattoo marks from time to time on Roger Tichborne's arm, but not real marks; and that at other times, when those fictitious marks were washed off, the arm was in its natural, untattooed state.

But in addition to the difficulties which stand in the way of that hypothesis, arising from its inherent improbability and the circumstance of the tattoo marks having been seen when Roger had no intention of exhibiting them, an observation occurs to my mind, which seems to me well worthy of being submitted to you. The defendant was asked on cross-examination if he had ever been tattooed, and answered in the negative. But if, as Roger Tichborne, he had been so constantly in the habit, as a young man, of imitating tattoo marks on his arm, the question would naturally have recalled it to his mind, and the answer we should have expected would have been, "I never was really tattooed, but I used often to amuse myself by making pretended tattoo marks on my arm for the purpose of annoying my lady relations and friends by showing them." And apart from these considerations, we have still the positive evidence of Lord Bellew to deal with; and unless Lord Bellew is perjured, the fact that Roger Tichborne was tattooed is positively proved. And here a piece of evidence occurs to me which appears strongly corroborative of Lord Bellew's statement. Lord Bellew told us that, the emblems having been already tattooed on Roger's arm, he tattooed or helped to tattoo the initials. Lady Doughty in her dying deposition informs us that Roger told her that the emblems had been tattooed by a sailor in Brittany, the initials by a young man at Stonyhurst. Unless we suppose Lady Doughty and Lord Bellew to have been acting in concert to deceive us the coincidence is remarkable. Unless Lord Bellew is perjured—and the learned counsel cannot ask you to believe he is perjured, unless you believe at the same time that his perjured testimony has been bought with gold—unless you come to the conclusion that Lord Bellew is perjured, and can then adopt Dr. Kenealy's theory that the tattoo marks so often seen on Roger Tichborne's arm were not real and genuine, but fictitious, tattoo marks, the only conclusion you can arrive at is, that Roger Tichborne was tattooed, and the inevitable consequence of that it is unnecessary for me to point out to you.



So much for the marks on the person, either congenital, or acquired, or created in the course of Roger Tichborne's life, as also those which the defendant has, and which you may be of opinion on the evidence, if you should come to that conclusion, Roger Tichborne had not. It is a very important part of the case undoubtedly. The testimony of the persons who speak to identity may be deceptive—possibly because it is intended to deceive; possibly because opinion is so often swayed by desire; possibly because, having prejudged the matter, they persuade themselves of identity, where, in fact, there is only a resemblance. But, as to the marks on the body—if you are satisfied of the existence or non-existence of marks on the body of the person with whom identity is claimed, while, if the marks correspond on the two persons, it affords strong, but not absolutely conclusive evidence of identity, as the coincidence may possibly be accidental—if they do not correspond, the evidence is of the most cogent and conclusive character that the identity cannot exist.

We now arrive at the last head of inquiry, and another test presents itself, which appears to me to be of more than usual cogency, and one by which you may be safely guided. Manifold as are the points of difference, in the infinite variety of nature, in which one man differs from another, there is nothing in which men differ more than in handwriting; and when a man comes forward and says, "You believe that such a person is dead and gone: he is not; I am the man"—if I knew the handwriting of the man supposed to be dead, the first thing I should do would be to say, "Sit down and write, that I may judge whether your handwriting is that of the man you assert yourself to be"—if I had writing of the man with whom identity was claimed, I should proceed at once to compare with it the handwriting of the party claiming it. For this reason I shall ask you carefully to look at and consider the handwriting of the defendant, and to compare it with that of the undoubted Roger Tichborne and with that of Arthur Orton.

Now you have had very valuable evidence before you on the subject of handwriting—evidence which may materially assist you in comparing the handwriting of Arthur Orton and the defendant, and that of the undoubted Roger Tichborne and the defendant claiming to be Roger Tichborne. Before we do anything let us try to fix in our minds some of the characteristic peculiarities of the handwriting of the defendant. And here let me ask you to follow the comparison of the handwritings which I am about to make by the practical means which I have taken care to have placed at your disposal. The Master and Mr. Davis, at my desire, have been good enough to take from the photographed documents and correspondence a number of different letters and words of the three writings, and they have put them side by side in a tabular form, so that you may form

a judgment between the three handwritings, Roger Tichborne's, the defendant's, and Arthur Orton's.\* Let me ask you to take these tables in your hands, as you follow me in the observations I am about to make on the subject of handwriting. They will serve to explain and illustrate the observations I have to make. But your attention need by no means be confined to them. You have all the letters and documents before you. When, from my observations and the tables, you are acquainted with the different points on which comparison should be made, by turning to the documents, you can, if you think it necessary, still further satisfy your minds.

Let us begin with the handwriting of the defendant, and first with the capital letters. There are two ways of making the capital letter "A;" the one the proper writing-master's form, the other that of a small "a" enlarged. The defendant invariably makes his "A" in the latter form, and a very ill-shaped letter it is. There is nothing very peculiar about his capital "B," except that, distinguished herein from Roger Tichborne's "B," it is a regularly formed letter. The same remark applies to his capital "C." But his "D" is sometimes remarkable for its neatness, and in having an initiatory up-stroke or prefix in the centre of the main down-stroke; at other times it is little more than a small "d" enlarged, made with only a partial down-stroke, and the circular part of the letter carried far above the top of the down-stroke. The letter "G" is always awkwardly formed, but calls for no particular remark. The capital "H" consists of three straight lines, with a little arm on the left of the first down-stroke. But there are certain letters of the defendant which are peculiarly characteristic, and which it is difficult to think we can be mistaken about, and the first of those that strikes me is the letter "I," the capital "I." You know that the capital "I" consists, in the first place, of an initiatory up-stroke, being more or less of a semi-circular form, from the top of which, and sometimes through which, the down-stroke of the "I" is brought down. Some people make their capital "I's" with this initiatory up-stroke entirely on the left side of the "I." Some people make a little flourish, as they are carrying it up. Others, again, bring the main down-stroke through the initiatory up-stroke so as to leave a portion of the latter on the right-hand side of the down-stroke. The defendant invariably does the latter, and I cannot imagine anything more peculiar than the formation of his "I's." Generally, it is just as if he was going to make a semi-circle, which, however, he does not quite complete, and then he brings his main-stroke down through the centre of it, making the down-stroke more than usually circular. In some instances the semi-circular up-stroke is a little less open, or even angular, but a considerable portion of it is always left on the right-hand side of the down-stroke. The down-stroke is left incomplete at its conclusion, and the entire

\* These tables will be found in the Appendix.

letter acquires a squat, vulgar character. You will find as many of these "I's" as you like in any of the defendant's letters. Sometimes, when he does not bring the down-stroke through the circular up-stroke, so as to leave a part of the letter on the right hand of the down-stroke, the letter assumes the form of the figure "9," and it becomes a sort of caricature of the letter "I." You will find examples of this in the tables. There is another letter which is also characteristic, that is the capital letter "L." His "L" is far more like a "Z" than it is like an "L." Sometimes it is like a "Z" crushed down. It is a most peculiar letter, the like of which I have never seen before in anybody's handwriting. The next letter is the letter "M." There are two ways of writing the capital "M." There is the "M" which consists of an up-stroke beginning at the bottom, then a main down-stroke, then another up-stroke, and then a down-stroke, and a little turn at the end, which is the proper writing-master's "M." But there is a very common way of making an "M," which is that of making it in the shape of a small "m" enlarged. The latter is the way in which the defendant invariably, and without exception, makes his "M." But he has a further peculiarity, which is that in making the first up-stroke of his "M" he generally encloses a well-defined loop; or if he is writing in a very small hand he makes a sort of rudimentary loop—a little crushed or squashed loop, like a sort of club. One or other of those forms he invariably uses. You will find it in all his capital "M's" throughout the whole of his writing. I have here several specimens taken from a variety of letters, and the "M's" are all made in one or other of these two ways. The capital "N" of the defendant is never made in the regular writing-master's form. Sometimes it is in the form of a small "n" enlarged, at others it is in the same form as his capital "M." His capital "P's," again, are singularly remarkable. In writing between lines, in the way a writing-master would teach you to write, if you make a capital "P," you bring the main-stroke down to the lower line, and do not go beyond it. Then you make the upper part of the "P" by bringing the pen up again, and forming the upper or semi-circular part of the "P;" or you make an up-stroke in a sort of semi-circular form from the bottom of the down-stroke and round the top of it; or you leave the down-stroke as you have made it, and make a semi-circle round the top of the "P." The defendant, on the contrary, invariably makes a capital "P," not by starting from above and bringing the main-stroke of the "P" down to the bottom line and there stopping, but he makes his capital "P" exactly the same as a small "p" enlarged. He begins at the top line, and brings the down-stroke through and below the lower line, and then makes the circular part of the "p" as it were between the two lines. He always makes his capital "P" in the way I have just been describing. Again, there are two ways of making a capital "S."



One is by making an up-stroke beginning on the left-hand side of the down-stroke and bringing the down-stroke through it; the other is formed by beginning from the right hand of the intended down-stroke. It is in the latter form that the defendant always makes his "S." Again, there are different ways of making the letter "T." One is by first making the down-stroke, and then by lifting the pen and making the top part of the letter round the top of the down-stroke. The other is by first making the top part of the letter, and then, without lifting the pen, by bringing the down-stroke through it. The third is by making the top of the letter on the left hand of the intended down-stroke, and then, without lifting the pen, making the down-stroke, so as to leave the initiatory stroke as a sort of arm on the left-hand side of the letter. It is in this latter form that the defendant always makes his capital "T." His "W's," again, are very remarkable. They are like a bird flying with extended and flapping wings. I can compare them to nothing better than that. They are very remarkable. In short, there are very few of the capital letters that are not eminently characteristic and peculiar. For the small letters in general I must content myself by referring you to the tables; but two or three of them are strikingly characteristic. Thus the letter "o" is usually written like an "a." Thus "Rous," is written "Raus;" "Croydon" becomes "Craydan;" "known" is "knawn;" "soon" is "saan;" "not" is "nat;" instances might be multiplied *ad infinitum*. There are two ways of making the letter "d." One by first making an "o" and then adding a straight down-stroke, the letters being made, as it were, by two strokes of the pen; the other by carrying on the "o," when completed, upwards in a semi-circular form without any down-stroke whatever. The defendant makes his small "d's" in both forms; when in the latter one he ends the circular part of the letter with a short and very peculiar curl or dash. A reference to either of the tables will fully show what I mean. The small "f" of the defendant is peculiar, being always written with the final up-stroke carried up on the left-hand side of the letter. There are two ways of making the letter "r." In the one, the arm or shoulder is on the left hand of the letter, in the other on the right of it. The defendant always makes his "r" in the former way. The letter "z" is very remarkable; the top part of it is raised above the level of the accompanying letters almost to the height of the capital letter, where the word begins with one. I shall describe this more particularly when dealing with the "z" of Arthur Orton, who makes the letter exactly in the same way.

Let us next take the handwriting of Arthur Orton and compare the defendant's with it. We have it in seven letters, written on his leaving England in 1852 and on his arrival at Hobart Town, and in what has been called the "Vow," found on the fly-leaf of the book 'The Rivals.' The handwriting, more especially in the letters, is that

of a younger man, of one who has more recently come from the writing-master's hands. The writing of the defendant is a freer and more careless writing, such as the other might possibly have become in a certain number of years, especially if a man took no pains to write well.

The capital letter "A" is written by Arthur Orton in the proper writing-master's form, while the defendant's is the small "a" enlarged; there is, therefore, no resemblance in respect of this letter. The same observation applies to the letters "H," "N," "S," and "T," in all which letters there is no resemblance between the two hands. But in the capital "B" the resemblance is very striking, as you will see on referring to the Table No. 2. The letters appear to be identical. You might transfer them from one side of the table to the other. The capital "C" is made by the defendant with a semi-circular up-stroke commencing with a sort of knob, and the main down-stroke or curl of the "C" is carried round it, so that the whole of the up-stroke remains on the inside. Arthur Orton makes his "C" in two ways: sometimes bringing the circular down-stroke of the "C" through the up-stroke, sometimes bringing it down on the outside of the up-stroke as the defendant does. In the latter case, as will be seen from the tables, the similarity between the two letters is very striking. Still more so is this the case in the capital "D's," the formation of which in the two writings would appear in many instances to be identical. There is frequently the same unusual initiatory up-stroke, the same inclination of the letter, the same way of carrying the circular part of the "D" either quite clear of or only just through the top of the down-stroke. It is difficult to look at the specimens given in the Master's tables, and to believe that both are not written by the same hand. There is less resemblance in the capital letter "E," but by no means such a dissimilarity as would preclude their being the same man's writing. The capital "F's" are more like. Both are formed with considerable elaboration and trouble. In the capital "G's," again, I find a strong resemblance. But there is no resemblance between the two writings in respect of the letter "H." But when we come to the capital letter "I," the case is very different. I feel bound to say it seems to me that the two letters are identical. Look, however, for yourselves at the characteristic letters of the defendant, exhibited in the table before you, or open any of the letters of the defendant and Arthur Orton, and judge for yourselves whether the "I's" are of the same hand. Arthur Orton, like the defendant, begins the letter with a semi-circle, through which he brings the down-stroke down. The form of the letter is in the great majority of instances the same in both writings.

As regards the capital letter "K," as the letter occurs only twice in Arthur Orton's letters, and, so far as I am aware, but once in the defendant's, we have scarcely an opportunity of forming a satisfactory

comparison. In one of the two instances the "K" of Orton is not unlike that of the defendant's. But the letter "L," which is one of the characteristic letters of the defendant, is one which occurs abundantly in the letters both of Arthur Orton and the defendant, and the resemblance is undeniably striking. The "L" of the defendant, as I have said, is of the strangest form, having more the appearance of an ill-formed "Z" than that of an "L." The "L" of Arthur Orton partakes materially of the same character. It gives one the idea of what, with an increase of carelessness on the part of the writer, would speedily become the "L" of the defendant. Still more remarkable is the similarity in respect of the capital letter "M," whenever Orton, who uses both forms, makes it in the form the defendant always uses. The defendant, as I pointed out to you, sometimes makes the up-strokes of his "M" with a loop, or, if not, with an initial knob. So does Orton, as you will see by turning to the corresponding specimens in the table before you. The subject cannot be better illustrated than by the writing of Arthur Orton in Mrs. McAlister's book. Compare the writing with any of the letters of the defendant. In the letter "N" there is no resemblance, Arthur Orton forming the letter, as he still frequently formed his "M's," in the regular form, though, as regards the latter letter, he frequently makes it in the defendant's form; while the defendant, in the few capital "N's" we are able to find, makes his in the form of the small letter "n" enlarged, or in the form of an enlarged "m." The letter "O," generally speaking, presents nothing striking, but in one or two instances there is a strong resemblance. In the capital letter "P" the coincidence is most remarkable. I pointed out to you the singularity of the defendant's "P" in respect of the down-stroke of the letter being commenced not above but on a level with the line—in other words, the capital letter being what is so unusual, the small "p" enlarged. Arthur Orton's is always the same. Look at the letters side by side, and judge for yourselves of the identity. Scarcely less striking is the likeness of Arthur Orton's capital "R" to that of the defendant. Generally speaking, I find no resemblance in respect of the letter "S." In a single instance the letters are formed alike, but it is the only instance I have discovered. In the capital "T" I find also no resemblance. The capital letters "U" and "V" do not occur in the writing of Orton; therefore no comparison can be made. But the letter "W" is remarkable in both handwritings. In both the letter has, as it were, arms or wings—more fully developed in the defendant's letter, more rudimentary, perhaps, in that of Orton, but still similar and analogous in character.

In the smaller letters many striking instances of resemblance will be found on referring to the tables. One or two notable instances deserve to be specially noticed. I have pointed out that the defendant makes his small "d's" in two forms. In one of them he ter-



minates the circular part of the letter with an abrupt curl or dash. It is remarkable that Arthur Orton makes his "d's" in the same manner. He uses both forms of "d," and in both his "d" is formed like the defendant's. In the second form the resemblance is very striking. Both have the same final dash at the end of the letter. Look at the words "and" and "received" in the table. The writing seems as identical as in the latter word is the spelling. Still more remarkable is the similarity of the letter "z" in the two writings. Ordinarily the top of the small "z" is on a level with the rest of the letters. The formation of the "z" is one of the remarkable peculiarities in the writing of the defendant. The top of the "z" rises high above the level of the other small letters, and assumes a most disproportionate size in comparison with the rest. It almost becomes a capital letter. Thus, in the word "Elizaberth," which occurs in the draft of the defendant's affidavit of June, 1868, in his own handwriting, and in his letters to Lady Tichborne of the 24th of June and 28th of July, 1867, the "z" rises to the height of the "l," indeed to that of the capital "E." The "z" of Arthur Orton is formed exactly in the same manner. It occurs three times in the word "Elizaberth," spelt in the same way as the defendant spells it, and also in the words "dozen" and "Lizy," in all which the top of the "z" rises above the line, and is exalted to a height disproportioned to the formation of the other letters. Just so we find the defendant makes it. You will find these instances in the table; compare them and judge for yourselves.

A connecting link, as it were, between the early writing of Arthur Orton and that of the defendant is to be found in the writing inscribed on the cover and fly-leaf of 'The Rivals,' which book, you remember, Mrs. McAlister told us had been lent to Arthur Orton to read at the station, and when it afterwards came back into her possession was found to have this writing in it, purporting to have been written by Arthur Orton. The handwriting is more formed than that which we find in Orton's letters, written five years earlier. But it has all the essential characteristics of his writing. So it has also some of the most essential of the defendant's. The capital letters "B," "D," "I," "M," "P," and "W," are all in the same characteristic form in which these letters are written by the defendant. The general character of the writing is the same. There is the same peculiar form of the small "d" with the abrupt curl or dash at the end, as you will see on looking at the word "received," which you will remember is a mode of spelling that word common both to Arthur Orton and the defendant.

Unable to deny the similarity of the two writings, the counsel for the defendant suggested, in the course of our proceedings, that this writing was a forgery, which, as the book is produced by Mrs. McAlister, necessarily implies a charge of forgery or partici-

pation in forgery, as well as of perjury, against that witness, without any other foundation than I am aware of than the assertion of the learned counsel. But we have become used to these things. When, how, or by whom this supposed forgery had been perpetrated the learned counsel omitted to inform us. The book with the writing was produced by Mrs. McAlister before the commission in Australia. The writing, therefore, was not introduced into it in this country. The defendant, according to his own account, left Boisdale in 1856; Orton, as we know, left it at the close of 1858, in which year this writing bears date. Is it likely that eight or ten years afterwards, any one at Boisdale or anywhere else in Australia should have had such a recollection and knowledge of the handwriting of the defendant and of Arthur Orton, if distinct persons, as to be able to combine in one fictitious writing the common and distinctive peculiarities of the two? For, it is to be observed that the letters in which the writing of Orton differs from that of the defendant, the "A," the "N," the "S," and the "T," are in this writing formed as made by Orton in his correspondence. A person forging the defendant's writing would have made them to correspond precisely with his forms.

Gentlemen, I cannot by the expression of a doubt give the slightest sanction to any notion that this writing is not, as it professes to be, that of Arthur Orton. And the suggestion that it is a forgery of the defendant's writing appears to me, I must say, as wild and unfounded a theory as any of the numerous ones which have been advanced in the course of this trial. Whether, upon comparing the handwriting with the defendant's, you will think that, notwithstanding the dissimilarity in respect of the four letters "A," "N," "S," and "T," the apparent identity in point of form of the rest leads properly to the conclusion that the writing is the defendant's, is matter for you to determine. If you arrive at that result you have the handwriting of the defendant identified with that of Arthur Orton.

There is no doubt a difficulty in pronouncing the handwriting of the defendant to be identical with that of Orton, arising from the fact that, while the great majority of the capital letters would appear to be identical, the letters "A," "H," "N," "S," and "T," are altogether dissimilar. This difficulty can only be got over by supposing that in an interval of several years the defendant altered the form in which he made these letters. I take it to be the fact that, while the general character of handwriting remains the same, persons do, in the course of time, change the manner of forming particular letters. Whether the difference in respect of the letters in question can be thus accounted for, you must judge. Some such hypothesis would appear to be necessary to account for the dissimilarity of these letters before the apparent identity of the rest of the letters of the

alphabet can properly lead to the conclusion that the handwritings are identical.

Gentlemen, upon a careful comparison of these handwritings you may come to the conclusion that there is no sufficient resemblance to warrant the inference of identity; or you may think the similarity so great as to leave no doubt in your minds; or you may think the resemblance, though not conclusive, sufficiently strong to make it probable that the handwriting is the same. In the latter case the probability becomes one of the things to be placed in the scale adverse to the defendant. As I observed when dealing with the Arthur Orton case, the comparison of handwriting becomes a most important element in the question of identity; and the result will have to be added to the other circumstances of the case, as tending to establish or negative the identity of the defendant with Arthur Orton.

But supposing you should not be satisfied that the handwriting of the defendant and that of Arthur Orton are the same, how stands the matter on the comparison of the defendant's handwriting with that of the undoubted Roger Tichborne? There is no part of the vast mass of facts with which you have to deal which, to my mind, is more important than the inquiry to which I am here inviting your attention.

First as to the capital letters. The "A" of Roger Tichborne is invariably the properly formed, writing-master's "A;" that of the defendant is always the small "a" enlarged, and awkwardly formed. The "B" of Roger is formed first by a down-stroke, then by a circular up-stroke, carried up, without lifting the pen, at the back of the down-stroke, over the top of it, while the final or circular part of the letter is imperfectly divided at the center, with scarcely any indication of a bend or division. The defendant begins his "B" with an up-stroke, which reaches to the top of the intended down-stroke. On the completion of the latter, the pen is lifted from the paper, and the two semi-circular parts of the latter are added with a proper division at the centre. Nothing can be more dissimilar; unless, indeed, it be the capital "C's," which stand in the most striking contrast to one another. The capital "C" of Roger Tichborne is the most peculiar I remember ever to have seen. It very much resembles a written form of the Greek " $\Phi$ " imperfectly made; being like an "O" with a down-stroke dividing it into two, which arises from the initiatory up-stroke being altogether disproportioned to the body of the letter. The defendant's is the common "C," made very much like the printed letter. There is not the faintest resemblance between the two. Nowhere is the dissimilarity more striking than in the "C" of the signature, "R. C. TICHEBORNE." The "D's," again, differ materially. The defendant commonly makes his capital "D" in the form of a small "d" enlarged. If he makes it in the more regular form he frequently prefixes an initiatory up-stroke, about the middle



of the down-stroke. Roger has nothing of the kind. The down-stroke of Roger's "D" is unusually long, and, when the round part of the "D" has been carried through it, projects beyond it to a considerable distance. Whichever form of the letter the defendant uses, the circular part of his "D" is generally far above the top of the down-stroke, or occasionally crosses it just at the top. Again, nothing can be more dissimilar than the "E's" of the two writings. The defendant's is an elaborately-formed "E." Roger Tichborne's is far more like a capital "C," the central part of the "E" being wanting. There is more resemblance as regards the letter "F." In both the letter is elaborately formed, but Roger's is more complicated and embarrassed with flourishes or unnecessary appendages. The "G's" and the "H's" have, as you will see on turning to the tables or the letters, nothing in common. Again, nothing can be more strikingly dissimilar than the capital "I" of Roger and that of the defendant. With Roger the main down-stroke of the letter never passes through the circular up-stroke, as the defendant's almost always does. The up-stroke is invariably kept on the left-hand side of the down-stroke, and is, in its way, as peculiar as that of the defendant. Instead of being circular, like the latter, it is angular, and made with a somewhat intricate loop; sometimes with one most singularly so. There is nothing of the sort in the up-stroke of the defendant. The "J" of Roger is his capital "I" brought down to a considerable length below the line. That of the defendant is only a capital "I." I have called your attention to the extraordinary formation of the defendant's "L's," which are much more like the letter "Z," sometimes as if crushed or squeezed down. The capital "L's" of Roger Tichborne are regularly formed, and have nothing whatever in common with those of the defendant. The "L" of Roger Tichborne has no loop at the bottom of the down-stroke. The defendant's "L" has a large one. I have also pointed out the peculiar formation of the defendant's "M." It is the small "m" enlarged, with a loop or knob at the beginning of the first up-stroke. Roger's "M" is invariably the proper writing-master's "M." Compare these letters in the Master's tables, or in the first letters of the correspondence that come to your hand.

The capital "N's" are as unlike as the "M's." Roger's "N" is always made in the regular writing-master's form. The defendant's "N" is the small "n" enlarged. Sometimes it is more like an "M" than an "N." You will find specimens of both forms in the tables, as well as some of Roger's. The capital "P" is of frequent occurrence, and nothing can be more striking than the difference between the two. The defendant's "P," as I showed you, is the small "p" enlarged—a most unusual form of making the capital "P;" the "P" of Roger Tichborne is formed in the usual way, and with con-

siderable elaboration. Compare the writing of the word "Paris," a word which occurs frequently in the correspondence with Lady Tichborne, and in the word "Poole." The "R's" of the two are scarcely more alike than the "P's." The "R" of Roger is formed of a long down-stroke with an up-stroke curling round it and brought down again, without any proper formation at the center—the whole letter being formed without the pen being lifted from the paper. The defendant's "R" has not only frequently an up-stroke prefixed to the main down-stroke which Roger's has not, but Roger's begins with the down-stroke and then carries the up-stroke upwards round it on the left-hand side, in a circular form, while the bend at the center of the final down-stroke, which in Roger's is altogether wanting, is well defined in the defendant's. The form of the letter in both writings is analogous to the form of the "B" in each. The form of the capital "S" is equally dissimilar. Roger Tichborne makes his "S" with a considerable loop on the left-hand side of the down-stroke. The defendant's "S" always begins on the right-hand side of the down-stroke. The "T's" are, if possible, still more unlike. There are three ways of making this letter. One consists in beginning with the upper part of the letter, from the left-hand side of the main down-stroke, and then bringing the down-stroke through it; another, in making an arm or shoulder entirely on the left-hand side of the down-stroke, and then completing the letter by the down-stroke; in the third the down-stroke is first made, and then, by a distinct action of the pen, a top is added to complete the letter. Roger's "T" is formed in the latter way, and in a very elaborate manner. We have an up-stroke, a well-formed down-stroke, then a lifting of the pen, and a circular flourish, completing the letter over the top of the down-stroke. The defendant's "T" is formed in a totally different manner. It is in the form I have secondly described. There is no circular formation at the top, but an arm or shoulder on the left-hand side of the down-stroke. The whole letter is formed without any lifting of the pen. As regards the letter "U," which occurs so frequently in the word "Upton" in the letters of Roger Tichborne, take the "Upton" of the defendant in the instances in which it is shown in the table, and compare it with the "Upton" of Roger, and the word "Uncle" as it is written by Roger Tichborne and by the defendant, and form your own judgment whether they are the writing of the same person. Again, the "V" of the defendant is of the simplest form; that of Roger Tichborne is a most elaborately-formed letter, with all sorts of superfluous strokes and flourishes. And what shall we say as to the letter "W?" I have called your attention to the singularly peculiar formation of it in the defendant's handwriting. Tichborne's is altogether different. It is a most complicated affair, consisting of a fully-developed "M," with an elaborately-formed final up-stroke. The "Y's" are somewhat more like,

but the first up-stroke is sufficient to distinguish them. The defendant has a well-formed loop beginning of the up-stroke from the inside; Roger Tichborne a scarcely distinct up-stroke made in a very different way from the inside.

The difference in respect of many of the small letters is equally remarkable; the small "a" of Roger Tichborne is always a "u." Thus he writes, "Curubineers," for "Carabineers;" "Cuulvry Burrucks," for "Cavalry Barracks;" "Cuhir," for "Cahir;" "Kute," for "Kate;" "Kutty," for "Kattie;" you will find the same thing wherever the letter occurs. I take up the first letter that comes to hand—a letter to Mr. Seymour—and it runs thus: "My deur Henry, I was very huppy to leurn the morning of my depurture that you hud at lust been elected." This formation of the letter is all but invariable. The defendant's, on the contrary, is distinctly formed. The letter "d" is written by Roger Tichborne, as sometimes by the defendant, with but a very small main down-stroke, but then it is wanting in the final curl or dash peculiar to the defendant and Arthur Orton. Sometimes it is made almost without any down-stroke at all. The "e" of Roger is always written like an "i," the only difference being that the "i" is dotted. I was led by this at one time to think that he wrote "begin" and "beginning" with an "i" in the first syllable; but on further observation I think that in this I was misled by appearances resulting from the similarity of the two letters. Without following the comparison through all the letters of the alphabet, but referring you to the tables in respect of them, I will only call your attention to one or two more. The one is the small "r." There are, as you know, two modes of making this letter. In the one, the more formal or writing-master's form, the arm or shoulder of the letter is on the left-hand side of the main stroke; in the other, or more flowing form, it is on the right. Some persons use both forms, some only one. Roger Tichborne, with very few exceptions, makes his in the latter form; the defendant, almost invariably, makes his in the first. The other letter to which I have to call attention is the letter "f." There are three forms of making this letter; in one there is no final up-stroke at all; in the other, there is a final up-stroke carried up on the right-hand side of the down-stroke; in the third, it is carried up to the left of the down-stroke. It is the last form which characterises the "f" of the defendant, and very often that of Roger Tichborne: and the coincidence was dwelt upon by the learned counsel for the defendant, as showing the identity of the handwriting. But against this it is to be observed that there is the greatest possible difference between the two writings in respect of neatness of formation. The "f" of Roger is neatly and more or less elegantly formed; that of the defendant is awkward and clumsy. The "k" of Roger is also peculiar in one respect. It is always formed like an "h," and in this respect



differs altogether from that of the defendant, which is a regularly formed "k."

But it is not only in the formation of particular letters that the two handwritings are entirely dissimilar, the same remark applies to the general character of the two writings. They have, in fact, nothing in common beyond the use of the letters of the common alphabet. The writing of the defendant is comparatively upright; that of Tichborne strongly inclining from left to right: the writing of Tichborne is angular, that of the defendant round; that of Tichborne abounds in loops, the defendant's has few or none; the tails of Tichborne's letters are sloping and angular, those of the defendant are either round or club-formed. The writing of the defendant is plain and simple; that of Roger redundant of unnecessary strokes and flourishes. Roger's letters, though sometimes ill-formed, have a certain elegance and finish; those of the defendant, unless where he appears to have taken more than usual pains, and to have written in a small hand, are awkward and coarse. The handwriting of the defendant is stiff and constrained; that of Tichborne is facile and flowing; you see that it has been written *currente calamo*. The pen has moved freely over the paper.

Lastly, let us look to the two signatures, in order to see whether they correspond, either in the whole, or as regards particular letters. In neither respect is there the slightest, the remotest resemblance. Indeed, when the signatures are looked at, I cannot understand how it is possible, unless the defendant totally altered the character of his handwriting in the course of his Australian exile, that anyone could conceive it for a moment to be the same handwriting. No letters could be found to show more strikingly the dissimilarity of the two writings than the three capital letters of the signature. Take both in your hand, and compare the three commonplace letters of the defendant's, "R. C. T.," with the corresponding letters as written by the undoubted Roger, in the singularly elaborate and peculiar form in which he makes them. Another thing which strikes me very forcibly is, that among the smaller letters of the signature, Roger Tichborne invariably makes the "r" with the shoulder on the right, while the defendant makes it on the left. There is not even the appearance of an attempt by the defendant to make the signature like that of Roger Tichborne.

And while I am on the subject of the signature, there occurs to me a circumstance which I think I ought to mention. When the defendant thought it necessary, having made up his mind to come to this country as Roger Tichborne, to go through the ceremony of a second marriage according to the Roman Catholic rite, and he was called upon to sign the marriage register, in signing his name as Roger Charles Tichborne, he was about to write it Titchborne, and only arrested his hand when the "t" was partially formed; the

half of it remains visible. Or, if the partially formed letter can be supposed to be part of an intended "h," he was about to write the name without a "c." Could twelve years of disuse of his real name have made Roger Tichborne forget how to write it? Somewhat later we find him practising the writing of the signature. Among the letters of Lady Tichborne we find an envelope, addressed to Lady Tichborne in a strange hand, covered all over with signatures of "R. C. Tichborne" in the handwriting of the defendant. There is, it is true, no attempt at any imitation of the handwriting of Roger Tichborne. But for what purpose was this practising of the signature resorted to? Was it for the purpose of accustoming himself to write the signature correctly when called upon to sign the name?

The handwriting of Roger Tichborne is quite as peculiar, perhaps, in its way as the defendant's. There is one most singular peculiarity connected with it, which is the habit that he has of prefixing a sort of hook to every word he writes, so that if you look along the line of one of Roger Tichborne's letters, whether vertically or horizontally, you find a series of hooks extending a long way out before the letters. So inveterate is the habit that if a word begins with a capital letter so as to make it difficult to affix the hook, he affixes it to the small letter which immediately follows. I do not suppose that anybody ever saw handwriting of the same character in that respect. The learned counsel for the defendant says that that is common to the defendant, that he does the same thing; but when you come to look at the defendant's, instead of being a regular hook, like Roger's, it is a little knob, a globe-formed knob, as if he rested his pen firmly on the paper for a moment before he made the up-stroke. And attention having been directed to this, I must ask you to look at Arthur Orton's handwriting, and see whether you do not see the same thing there. Take a number of Arthur Orton's letters and you will find exactly the same thing in that respect that you find in the defendant's handwriting, which is very far indeed from the hook of Roger, and no more than a little sort of pause and pressure of the pen on the paper before he starts. That you will find in Arthur Orton's as well.

Gentlemen, before I pass away from the subject of handwriting, I have to call attention to one of the most remarkable circumstances which have occurred in the course of this inquiry. It appears that from a very early period Roger Tichborne had adopted a habit of placing a dot, such as is usually placed over the letter "i," over the letter "y," wherever a "y" occurred at the termination of a word, as, for instance, in the words "my," or "very," or the like. In his address to you, the learned counsel for the defendant drew attention, fairly enough with some degree of triumph, to the fact, that in certain letters of the defendant the final "y" in the words ending

in that letter was dotted in a similar manner. This discovery was naturally calculated to produce considerable sensation. But one must not allow oneself to be led away too easily by first impressions, and it sometimes becomes necessary in the investigation after truth to look somewhat more closely into facts, which, at first sight, may appear to lead irresistibly to a given conclusion. Upon the inquiry which I deemed it necessary to institute, I arrived at the following results. That Roger Tichborne had this singular habit from the earliest period appears from his earliest letters. In French the termination of a word in "y" occurs very rarely indeed; but, as a word, "y" frequently occurs, and wherever it does so occur in the French letters of Roger, the "y" is always dotted. He carried this habit into his English letters as far down as the beginning of the year 1851. At that time he partially discontinued it, and by the middle of that year he had discontinued it entirely. From the middle of 1851 he had abandoned the habit altogether, and in the subsequent letters from Ireland, from Canterbury, from Upton, and in those from South America, the dotted "y" disappears entirely, and no trace of it is to be found. In the letters of the defendant from Australia, as also in those written in this country prior to the month of July, 1868, correspondence extending over a year and a half, no instance of a dot over the "y" is to be found. But from that time forward the final "y" in the writing of the defendant appears regularly dotted. How is this to be accounted for? Was it that, although the writing of the defendant had lost the faintest trace of resemblance to that of Roger Tichborne, being Roger Tichborne, the recollection of this habit had been revived in his mind, and that in 1868 he reverted to a habit discontinued as far back as 1851? Or was it that, having become aware that Roger Tichborne had had this habit, he adopted it, in order, by the appearance of this singular peculiarity, to give to his writing the semblance of being that of Roger Tichborne? The time and the circumstances under which he assumed this practice may throw light on the solution of this question. We know from his letter to Lady Tichborne of the 20th of April, 1867, that he was at that time pressing her for the production of certain letters, though what those letters were that he was asking for is not more specifically stated. It is highly probable that the letters then asked for were some of those of Roger Tichborne. It is equally probable that, if he was not Roger Tichborne, the letters he would first desire to procure would be the letters of Roger from South America, as from these alone a knowledge of the travels of Roger in that part of the world could be obtained. Information as to the Tichborne family, as to the life of Roger Tichborne in England, in Ireland, in the army, might be obtained from the sources of information with which the defendant had surrounded himself; but the details of his travels in South America could be ascertained from the letters from South



America alone. If these letters were handed over to him by Lady Tichborne, they would afford no indication of the habit I have referred to, as, at the time they were written, this practice had been wholly discontinued. But in March, 1868, Lady Tichborne died; and from that time all the papers of Lady Tichborne, and among them the letters of Roger to his father and mother, as well as any papers which Roger may have left behind him, were in the undisturbed possession of the defendant till the following June, when, under an order of the Court of Chancery, they were delivered into the custody of the court, by which means such of them as may have been delivered up—of course we cannot tell whether all were so delivered up—have become available for the purpose of the litigation. Among the papers thus produced are some of the earlier letters of Roger, in which the “y’s” are regularly dotted; and it may be that the shrewdness and quickness of perception of the defendant may have enabled him to discover, or some one assisting him may have pointed out, this singular characteristic peculiarity. If in any of his earlier letters this practice had been found to exist, it would undoubtedly have been a telling circumstance in his favour. But when we find that it was not until these letters had come into his possession that the “y’s” are found to be thus treated, we may well ask ourselves whether this dotting of the “y’s,” instead of being the spontaneous revival of a former habit long since discontinued and abandoned, was not an artifice resorted to by the defendant to identify his writing as far as possible with that of Roger Tichborne, in case this habit of Roger’s should have been remembered by any of his former correspondents. How far this may be the case I must leave you to judge.

As respects the handwriting, the learned counsel was compelled to give up all attempt to show any resemblance whatever between the writing of the defendant and that of Roger Tichborne’s letters. I asked him to look at the two handwritings, and to say whether any man could suppose them to be the handwriting of the same person. I put this case to him: Suppose shortly after the loss of the “Bella,” a man had come forward and said, “I am Roger Tichborne,” and had asserted it in documents written in the present handwriting of the defendant, could you have asked anyone to believe that that was the handwriting of the same person? “No,” he said, “I could not. But twelve years of desuetude in the exercise of penmanship may make a man forget the handwriting he was last accustomed to use, and when he was put to write again he would revert, not to the handwriting that he wrote last, but to that of his boyhood.” Having assumed this position, the learned counsel went on to assert that a resemblance was to be found between the handwriting of the defendant and the handwriting of Roger Tichborne when he was a boy at Stonyhurst. He quite conceded that between the

present handwriting of the defendant and the handwriting of the undoubted Roger Tichborne up to the time he went on board the "Bella," he could not ask anyone of common sense to say it was the handwriting of the same person; but he says he has gone back again to the handwriting of his boyhood and early youth. The first question is, whether that is so in point of fact. I must ask you to look at the handwriting of the early letters of Roger from Stonyhurst, and until the time when his handwriting was formed—which letters form, as it were, the connection between the handwriting of the boy and the man—and to judge for yourselves whether you see any resemblance between the handwriting of the defendant and the early handwriting of Roger. "I cannot say," says the learned counsel, "that the letters are formed the same, but they are the rudimentary letters of the boy Roger." Gentlemen, there are but few of these early letters. They are written in a very small, cramped, and apparently unformed hand, and scarcely afford materials for a complete and satisfactory comparison. In the course of the next year or two the handwriting of Roger developed itself into the full, flowing hand we find in the English letters—no doubt a very different hand—but, as it strikes me, subject to your better judgment, the form of the most striking letters is to be found in the earlier writing. This is particularly visible in the capital "A's" and "C's," these being quite in the form of the later "A's" and "C's," though I find one instance in which the letter "C" is more like the defendant's. The letters "J" (the letter "I" does not occur), "M," "N," "P," "R," "S," "T," occur in these earlier letters, and are all in the same form as that of the later ones, afterwards more fully developed in the larger and firmer writing of manhood. The signature is in a very small hand, but it is the rudimentary one which soon afterwards developed itself into the larger signature with which we are now all familiar. Look carefully at the earlier letters, and judge for yourselves whether there is any reality in the fact as asserted.

But does the whole theory on which the argument is based rest on any other than the most shadowy foundation? Do you believe that a man who had not the opportunity of writing a letter for twelve years, would at the end of that time forget the handwriting of his manhood, and go back to that of his school-boy days? If so, why not go back to your pothooks and hangers? Is such a thing established by experience? If, as is asserted, it is possible that you may lose a language, do you in like manner lose the faculty of writing and making letters? If you cease to write for a number of years, do you go back to the handwriting of your earlier days, or to the last handwriting you were used to? I should certainly have thought you would go back to the last. It might be more or less like it, but you would still go back to the

handwriting you last used, rather than to that which you first learnt. It is very true handwriting alters in the course of time, but it has always the foundation of the early habit of writing, whatever the modification which may be introduced into it in the course of time. We have heard of persons who have associated with Red Indians and lived among them for years, away from civilised life. Men have been cast away on uninhabited islands, and have been years before they were brought away. Did any one ever hear that such persons in writing afterwards reverted to the writing of their boyhood? Many men are condemned to long periods of penal servitude, during which a man is put to such work as he is fit for, and has no occasion or opportunity to write letters, or to write anything else. Suppose a man comes out of penal servitude at the end of ten or twelve years, does he go back to the handwriting of his boyhood? Did anybody ever hear of such a thing? I confess it seems to me to be one of those shadowy theories of the learned counsel which have no reality in them, and unless you can adopt that theory and are satisfied with the explanation, then I say if you look at the general character of the handwriting of Roger Tichborne, or if you break it up into its component letters, the handwriting is as dissimilar to that of the defendant as it is possible for one handwriting and another to be. The defendant does not make a single letter like Roger Tichborne, and unless you can adopt the learned counsel's theory in the comparison of the handwriting, here again the case must terminate fatally to the defendant. Except that theory be sound, it is impossible that the handwriting can be the handwriting of the same man. Whether you will adopt it is a matter for you to determine.

But it is not in respect of handwriting alone that a comparison between the writings of the different epochs has to be made. Spelling affords us another criterion; grammar supplies us with another. Numerous instances of characteristic spelling are to be found in both these writers, but which have nothing in common. Roger Tichborne, learning the English language, never became fully acquainted with the orthography of the language. You find him perpetually making mistakes in spelling. They are characteristic mistakes. The defendant makes a multitude of mistakes; they are equally characteristic, but they are not the same. There are a vast number of instances in which they both make mistakes. But then, as Mr. Chabot pointed out, there are but four or five words in which the mis-spellings coincide: "Meant," without the "a," "lodging" without the final "g," "expense" written with a "c," instead of an "s" (there are many people who write it both ways), "entend," instead of "intend." These are about the only words. Both writers make a great many mistakes, but there is a striking and remarkable difference between them. And the more numerous the instances of mistakes in two writings, unless the mistakes are common to both, the greater obviously does



the improbability become that the writers are the same. And not only are there but those few mistakes in common, but there is this remarkable circumstance—I mean the extraordinary disproportion which there is in the quantity of mistakes with reference to the extent of the writing. Mr. Chabot tells us that he finds 165 instances of mis-spelling (including herein mere inadvertencies, as also the characteristic termination of the past tense of the irregular verbs) in the writing of Roger Tichborne, while there are 190 in that of the defendant. But it is not enough to say one man has made a given number of mistakes in spelling, and the other has made a given number, unless you take an equal quantity of writing. I do not think Mr. Chabot has sufficiently considered this, or worked it out, and I have caused it to be worked out. Mr. Chabot has simply given us the result of adding up the number of instances in which each party mis-spells, though he has carefully distinguished between the mis-spellings of the one and the other, and pointed out that there are only four or five instances in which they coincide. That seemed to me not altogether a satisfactory criterion, as the number or length of the letters written by the defendant, and brought before us, bears no proportion to the number or length of those of Roger Tichborne; and I desired, therefore, that the number of lines should be counted from the beginning. The Master has assisted me. I have seen to it myself, and I know it has been carefully done. We know the number of lines in the letters of the defendant, and we know the number of lines in the letters of Roger Tichborne. I have had the mistakes of grammar and the mistakes of spelling carefully collated and compared: the result is that, whereas there are seven mistakes of spelling or grammar in a 100 lines of the undoubted Roger Tichborne, there are fifty-seven in a 100 lines of the defendant. That is certainly a very great difference.

I will tell you some of the characteristic mistakes of Roger. He invariably writes “s-a-i-s” for “says.” That occurs thirteen times. He frequently writes the word “intend” with two “t’s.” That occurs nine times. He writes the word “reproach” without an “a” five times. He writes the word “c-l-o-t-h-s” for “clothes” five times. He often writes “they” for “these.” He writes “commission” with only one “m.” He writes “veriaty” for “variety,” “reesonably” for “reasonably,” and “lottery” with one “t.” He writes “magnificent” for “magnificent,” and “multeers” for “muleteers.” He writes “come” for “become.” He writes “donne” for “done.” He writes “promise” with a double “s.” He writes “cost” for “coast.” In irregular verbs ending in “d,” such as “send” or “build,” he uses the present for the past tense; and he is apt to give the infinitive of the verb instead of the substantive—“relieve” for “relief,” “believe” for “belief.” Sometimes, but in comparison with the defendant only seldom, he omits to add the final “d” by which the present tense of

a verb is converted into the past. Mr. Chabot says he finds eleven instances of this in Roger Tichborne, but that with the defendant it is habitual. Roger writes "b-e-h-o-n-d" for "beyond." He sometimes writes "fortunately" and "unfortunately" without an "e." He writes "few," instead of "a few;" "a news" for "news," both which are French. He has a curious way of writing "at a loss;" he writes it "at lost." Then there are a good many other instances of words spelt wrong only once or twice; some of them generally spelt right. Thus "pity" is spelt once with two "t's;" right is once spelt "wright;" and the whole amounts to a very considerable sum total; subject, nevertheless, to the observation I made before as to the relative proportion the mistakes bear to the quantity of writing.

The defendant, too, has characteristic mistakes in abundance, but they are not the same. He invariably writes the word "receive" (just as Orton does) without an "i," "r-e-c-e-v-e." That occurs 106 times. The word "affidavit" is written with a final "d" instead of a "t," thirty times. The word "trouble" is written "truble" or "troble" nineteen times. The word "afraid" with two "f's" fifteen times. The word "children" with two "l's" eighteen times. The word "few," "f-u-e," nine times. This also is Arthur Orton's way of spelling the two last words. The words "c-a-u-s-e" and "c-a-u-s-s-e" (in "of course") occur several times. He writes "think" for "thing;" "anythink," "nothink." The word "necessary" is a word he cannot get over. It occurs five times and is always written wrong. The word "interest," written "intres," or "intrets," is a word that always perplexes him. The word "possession," is written "p-r-o-c-e-s-s-i-o-n," "p-r-o-s-e-s-s-i-o-n," "p-r-o-c-i-s-s-i-o-n," "p-r-o-u-s-s-i-o-n." The word "mention" is always written "mens-h-i-o-n." "Colony" is another word he cannot spell; he writes "colonoly," or "colonly." "Almost" and "always" are always written wrong, namely, with two "l's." He confounds "whether" and "weather." "Particulars" is another word which puzzles him. It becomes "particlars" and "particullars." "Promise" is spelt "m-i-s-s," or "m-i-c-e." "Getting" is spelt with one "t." "Believe" is written wrong, and "friends" is sometimes written "f-r-i-n-d-s," also an Ortonian form. "Spasm" is written "spasasm." "Worry" is another perplexing word. He writes it "w-o-r-r-a-t," and "w-o-r-r-i-t." "Registering" is another word he cannot get over, "r-e-g-e-r-e-s-t-e-r-e-d" and "r-e-g-e-r-a-t-e-r-i-n-g." "Secrecy" is written "secretsy." "Temper" becomes "timper"—"Mary is commencing her timpers again." "Perhaps" is shortened into "praps." The word "knock" is twice written without a "k" at the beginning—"I am quite nocked up." He writes "a-going" for "going." He writes "a-normious," and "a-nuff"—vulgarisms which we should hardly expect in Roger Tichborne, and which certainly nowhere occur in his letters. You remember the

singular word “b-u-s-t-e-d.” “Military” is a word which strikes me as very remarkable, because I should think a man who had been in the service would hardly have forgotten how to spell that word. He writes it “m-i-l-a-t-a-r-y.” That is hardly what we should have expected from an officer. He perpetually writes “has” for “as.” It occurs forty times in the course of his letters. In his earlier letters he writes the pronoun “I” with a small letter, a thing Roger Tichborne never does. He makes most flagrant mistakes of grammar. He constantly omits the “s” of the genitive case. “My uncle valet;” “My uncle likeness;” “My father and Alfred death;” “I heard of Smith death;” and the like. He writes “give” for “gave.” “My cousin give me to understand.” He writes “see” and “seen” for “saw;” thus, “As soon as he see me.” He habitually omits the final “d,” which converts the present tense into the past. He perpetually omits the auxiliary verb. Thus, for example: “She a very nice person;” “It many years;” “It very bad weather.” He habitually confounds the singular and the plural, both in the noun and the verb—a mistake into which Roger very rarely falls, and then apparently from inadvertence—thus, “It bear the Doughty crest;” or, as one instance out of a hundred, “Mary and little Agnes joines me in love to you.” The plural “were” is as often written “where,” or “ware”—the latter an Ortonian form. This occurs twelve times. In one instance he writes “If I had have known;” in another he writes “I have being,” for “I have been”—“I have being has a butcher.”

It would be an endless task to go into all these numerous instances. They occur incessantly in the defendant’s letters. You have only to take up any one of them to find examples. But it is necessary to say a word on the spelling of Arthur Orton as compared with that of the defendant. There is one very remarkable word which occurs thrice in Arthur Orton’s letters, and an equal number of times in documents written by the defendant—that is, the peculiar way of spelling “Elizabeth,” which Arthur Orton makes “Elizab-e-r-th.” He gives his address as at “Mr. Ladd’s Elizaberth Street,” and he twice writes the christian name Elizabeth in the same way. The defendant, in his affidavit, where he has occasion to speak of Elizabeth Street, Sydney, writes it in exactly the same way, “Elizab-e-r-th.” Both in his affidavit and in two of his letters to Lady Tichborne, in which he speaks of a maid-servant by the name of “Elizabeth,” he writes it “Elizaberth.” You will find the word in both writings, side by side, in the Master’s tables: you had better compare them. You will see in both the peculiar formation of the “z,” to which I have before referred. The similarity of the writing and this strange manner of spelling the word, occurring in combination, are certainly not a little remarkable. Again, Arthur Orton, like the defendant, always spells the word “received” without an “i.” He spells the



word "children," as the defendant does, with two "l's." He, too, writes "weather" for "whether." He generally writes "fue" instead of "few," and "frinds" instead of "friends," the way we find the defendant in various instances spelling these words. He spells "geting" for "getting." He makes similar mistakes of grammar. In one instance he too writes, "I have being" for "I have been." He equally confounds the singular with the plural—"She say," "You answers," "It bear a cross," and the like. He, too, writes "ware" for "were," "give" for "gave," as "the man I give it to," and "a-going" for "going," as the defendant does. He writes "has" for "as." He, too, frequently uses the small "i" instead of the capital "I" for the pronoun.

The use of capital letters affords another point of comparison. And in this respect both Roger Tichborne and the defendant sin against grammatical propriety, but in one respect in the opposite direction—Roger Tichborne in not using capital letters where required; the defendant, while he does the same thing as regards not using them when necessary, in frequently using them in the midst of an unfinished sentence. The defendant, too, is remarkable for omitting the use of capital letters in writing proper names. Thus he writes "Lady t." for Lady Tichborne. He even in one instance signs the name of Tichborne, as his own name, with a small "t."

Lastly, punctuation affords an important element of comparison. Persons vary exceedingly in this respect. Not, indeed, persons of education; for with them punctuation, being based on grammatical rule, is uniform; but with persons of less perfect education, the use of stops is infinitely various. Some persons scatter their commas broadcast, without any reference to rule; others seem to forget that punctuation is at all necessary as a part of writing. Some persons end the sentence with a comma instead of a full stop, others without any stop at all. Both the undoubted Roger Tichborne and the defendant punctuate incorrectly. Roger was careless and deficient in the use of stops, seldom using the full stop at all. The defendant's punctuation is redundant to an extraordinary degree, and what is most remarkable is, that instead of a comma, he always places, whether or not intending it for a comma I cannot say, a full stop. This Roger Tichborne never does; but it is, as we have seen, a characteristic peculiarity of Arthur Orton. It occurs in the "Vow" no less than six times in six lines, in a single sentence. You will also find it in his letters. It occurs in like manner in every letter of the defendant; so much so as really to amount to a sort of curiosity in the matter of punctuation.

But, besides the question of handwriting, there is the question of the composition of the letters. Roger Tichborne was not a scholar, he was not a man of high-class education, but still he could think and write on serious subjects, and he could express himself in writing.

There was no want of fluency of language. He spelt badly if you like, and in addition to spelling badly, he wrote sometimes ungrammatically, as a foreigner might write who had not thoroughly mastered the language, and he perpetually used French idioms, translating from the French into English. But there are few or none of the gross mistakes or vulgarisms that you find in the defendant's letters. Though we have grammatical mistakes, such as a foreigner might have made, we have not those of the grosser sort, such as the confusion of the plural and the singular, and the like, which are simple vulgarisms arising from a totally defective education. We have not the perpetual recurrence of the superfluous "h," as "has" for "as." And what shall we say of the defendant's use of the small "i?" I counted in one letter fourteen small "i's" in sixteen lines. It was suggested, indeed, that this was the result of a French education, as in the word "je" a Frenchman uses the small "j." But that is only so where the word occurs in the middle of a sentence, and, what is still more to the purpose, no instance of such a thing is to be found in Roger Tichborne's writing. Again, the style of Roger's letters is flowing, the construction more or less elaborate, and the composition, in some cases, such as would not do discredit to a more finished letter-writer. What do you find in this respect in the defendant? Take the last letter of Roger Tichborne from South America, or the extract from his journal, and the first letters of the defendant from Australia, and compare them—the fittest comparison that can be made. The style of the defendant is like that of a school-boy with his short sentences, which every one must have seen examples of. "My dear Mamma I hope you are well. I hope papa is well. My dear Mamma I hope you will send me a cake. My dear Mamma I have no more money left. My dear Mamma I hope you will send me a sovereign." It is the style of a person who dares not trust himself to venture upon a more complicated form of style. It is that of a person who has not sufficient power of composition and expression to venture on longer sentences. The sentences are like the short flights of a bird that has not yet learned to fly. One remarkable characteristic is the perpetual introduction of the "My Dear Mamma," totally different from the habit of Roger, who never used the term "Mamma" after his first year at Stonyhurst, and who never even uses the words "My dear mother," except to begin his letter and to end it; whereas in the defendant's letters, I may safely say that, on an average, in every three lines there is a "My dear Mamma."

But the learned counsel meets the formidable difficulty arising from the difference of style by presenting a theory which it is right you should consider—namely, that this man living among uneducated persons, in a state, if not of barbarism, of semi-civilization, would forget practically how to speak and write, which would account for

the strange composition, the gross mistakes, and the vulgarisms of the defendant, things which nobody who has had a decent education falls into, but which occur in the defendant's composition in such profusion. But can even twelve years of Australian life have wrought this marvellous change? Take the graphic description of the passage of the Andes and the ride across the Pampas, written in flowing and descriptive language, and then take a letter of the defendant, and unless you are satisfied with the explanation that absence from civilized life and desuetude have produced this change, is it possible to say they can be the productions of the same man? Here, again, I put it in this way—Suppose Roger Tichborne, or some one saying he was Roger Tichborne, had come to England within twelve months of the time the 'Bella' had gone down, and had written that sort of letter, and in that style of composition, would not everybody have laughed, and said, "It is no more Roger Tichborne's style, and no more Roger Tichborne's way of thinking, or writing, or expressing himself, than the handwriting is that of Roger Tichborne?" Therefore, unless you can accept that explanation, unless that explanation can come to the assistance of the defendant, I am afraid there is only one conclusion at which you can arrive. However, that is entirely for you.

The result, then, of the comparison we have thus instituted is, that as regards handwriting, spelling, and punctuation, there are striking points of resemblance between the defendant and Arthur Orton. It is quite true that in Arthur Orton's letters you find a cramped and rigid hand like that of a school-boy who has just emerged from the school-room, and from the ferrule of the writing-master; but you find there the rudiments of the future handwriting. It is true there are certain letters in the defendant's writing which differ in form from those of Arthur Orton, but the greater number appear to be identically the same. On the whole do you believe the handwriting to be the same? Take the handwriting in the 'Rivals,' and judge for yourselves whether the handwriting, while it corresponds in some degree with that of the boy or youth Orton, corresponds or does not correspond with the handwriting of the man, the defendant. If you find that it does, the question will be whether, taken in conjunction with the spelling and punctuation, you find in it additional proof that the defendant is Arthur Orton. If it does not, then this part of the case will not affect him practically, as it otherwise would do.

As regards the comparison with Roger Tichborne, the result is that, whether we look to handwriting, spelling, punctuation, thought, style, or composition, the two writers have nothing in common, and cannot be the same, unless the explanation offered by the learned



counsel shall appear to you, as thinking, sober-minded men, to be such as you can seriously accept as worthy of your adoption.

That is all I have to trouble you with on the subject of handwriting, spelling, and composition. To-morrow I shall address a few general observations to you in conclusion, and then leave you to the decision of this great case as you shall be advised.

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## ONE HUNDRED AND EIGHTY-EIGHTH DAY.

*Saturday, February 28, 1874.*

THE LORD CHIEF JUSTICE: Gentlemen of the Jury, we have travelled together over the large and extensive range of facts appertaining to this case, and the evidence tending to establish those facts on the one side or the other. My purpose has been to place it before you as one great whole, and to show you how the various parts of it dovetail, as it were, into one another, and the relation which those parts bear to each other, as one entire whole; because I was satisfied from the beginning that it was only by looking at it in that light, by showing the relation which the parts bear to the whole, and then embracing the whole in one large comprehensive view, that the case could be thoroughly understood and its merits fully appreciated. Let us at the last moment see whether we can gather together the threads of this somewhat tangled skein by rapidly passing in review the prominent and salient points which have arisen in the case.

In the first place, is the defendant Arthur Orton? We have a strong body of evidence affirming his identity with that man; we have, on the other hand, a strong body of evidence to the contrary. In point of numbers the witnesses for the defendant exceed those for the prosecution; nevertheless, the evidence for the prosecution, though the witnesses are less numerous, may possibly be deemed by you more weighty, because it includes the evidence of a woman with whom Arthur Orton kept company, and who, if anyone would be likely to have his features and appearance impressed upon her memory, would be the person. But then, on the other hand, besides the witnesses who speak generally from their recollection of Arthur Orton's personal appearance, there are witnesses who speak to personal marks on Arthur Orton, which the defendant undoubtedly has not; and if the evidence of these witnesses could be implicitly relied on, there would be an end of the case, so far as the Orton question is concerned. But these witnesses are comparatively few, and it is necessary to look beyond their evidence, and to take in the whole range of facts which relate to the Orton question. The witnesses

may intend to deceive us, or, not intending to deceive us, they may deceive themselves; they may, possibly, be applying to Arthur Orton facts and circumstances which existed in one or other of his brothers, whom, after the lapse of many years, they may forget, and remembering that they saw these scars, and marks, and earrings in one or other of the brothers, may apply them to Arthur. We must extend our range further, and while not omitting to bear this evidence in mind, must consider how far it is compatible with the undoubted facts in the case.

First, we must follow Arthur Orton to South America. We know that he was at Melipilla; we know that the defendant was at Melipilla; we know, unless the evidence deceives us strangely, that there was but one Englishman at that time in Melipilla; we find no trace of any Roger Tichborne in Melipilla, either in his letters or in the Castro correspondence; but in the Castro correspondence, while but one Englishman is spoken of, we find that that Englishman was known as Arthur Orton, and that, so far as the evidence goes, the name of Roger Tichborne was unknown. Impossible to suppose that Roger Tichborne ever adopted the name of Arthur Orton—a name of which probably in the whole course of his life he never heard. There was one Englishman there, and one only; that Englishman was known by the name of Orton. The facts stand simply: one Englishman there—a person passing by the name of Arthur Orton there—the defendant there—no trace of Roger there. What is the inference which legitimately arises from that state of facts? Has any explanation been offered to meet it?

We follow this Orton to the Australian world; we find him landing at Hobart Town; we find him at once betaking himself to the sort of occupation which his education and his antecedents would naturally lead him to. He becomes slaughterman to the butchers at Hobart Town. Afterwards he changes that occupation for that of a stockdriver—in other words, a herdsman; but he couples with it that of a slaughterman. He passes from Tasmania into Australia proper. We find him at Boisdale, at Dargo, and again at Boisdale, occupied in the same way—a mounted stockdriver and slaughterman; he follows in Australia the same occupation that he followed in Tasmania. He is in that employment—at least if we can trust the evidence of Hopwood—at Mewburn Park; we know he was so for two years at Boisdale and Dargo. Afterwards we hear of him carrying on the same business elsewhere in Australia. The witnesses for the defendant, who distinguish between Castro and Orton, tell us that those were the callings which Orton followed during his wanderings in Australia.

That Orton was at Boisdale, at Dargo, and again at Boisdale, we know as an absolute certainty. Equally certain is it that the

defendant was there. His case is that he was at those places under the name of Castro; and the same reasoning which applies to Arthur Orton at Melipilla applies again to Arthur Orton at Boisdale, Dargo, and Boisdale. If Arthur Orton was there, and you find no trace of Castro—in other words, of Roger Tichborne under the name of Castro, as the defendant has represented—what is the legitimate inference which must follow? Arthur Orton undoubtedly at Boisdale, Dargo, and Boisdale; the defendant undoubtedly there. What if, besides the positive evidence of Mrs. McAlister and her husband as to the identity of the defendant with Arthur Orton, which, if they are right, would of course be conclusive of the case, their evidence and the Boisdale books should satisfy you that there never was a Castro there—what must be the inference? The defendant having been there, and Arthur Orton having been there, and Castro not having been there, you must judge whether any other solution of the matter can be afforded than this—that the man who was there was Arthur Orton? Just as we have no one but Arthur Orton that we can make out at Melipilla, so we have no one but Arthur Orton that we can make out at Boisdale, Dargo, and Boisdale. He next leaves Boisdale and Dargo and takes to a wandering life. And we cannot fail to be struck with the identity of the life and occupation of Orton with those of the defendant. At one time he is acting as a stock-driver, at another he is a horse-breaker and horse-dealer, at others he is a slaughterman and butcher's man. We cannot but be struck by the singular coincidences between the life of the one man—the certain life of the one man—and the life which we are told by the defendant was also the life of the other. But how should Roger Tichborne have come upon the idea of being either a stock-keeper or a butcher, or a horse-breaker or dealer in horses? To Arthur Orton those things were natural. He had been brought up as a butcher; he was acquainted with cattle. The first thing he learned in addition to the business of a butcher was the breaking-in of ponies, and the dealing in ponies, and the only change is that instead of dealing in Shetland ponies he now deals in horses. It cannot but strike one as remarkable that the very life we know Arthur Orton led should have been the life adopted, according to his own statement, by the defendant; yet so it is—we have the same identical things. Arthur Orton followed the trade of a butcher's man, and then of a stock-keeper, and of a butcher, with intermediate intervals of horse-breaking and of vagrancy, wandering about to the various diggings, picking up a livelihood as he could. So, according to his own account, does the defendant. He follows the calling of a stock-keeper and slaughterman; then you have him wandering about breaking horses. Then he is a butcher's man. Finally he sets up as a butcher himself. So that we have the defendant to a great extent



following the same course which Arthur Orton appears to have followed; and we find him following a course of life which, unless under extraordinary circumstances—circumstances which have not been brought to our knowledge—we can hardly suppose Roger Tichborne would have followed.

Next you have the fact of his marriage. The marriage is perfectly consistent with the marriage of a man in the position of Arthur Orton. So is the manner of its solemnization, in a private house by a dissenting minister. The statement of the age corresponds with that of Arthur Orton.

Then comes the Richardson letter—a letter which we can easily account for if we suppose it to have been written by Arthur Orton, but which I do not see that we can account for on the hypothesis of its having been written by Roger Tichborne. Then there are the statements of the defendant himself. If you believe Mr. Petitt Smith, how can we explain the defendant's statement to him that he had been brought up to the business of a butcher? or his thorough acquaintance with Newgate Market? How, otherwise than on the supposition that the defendant is Arthur Orton, can we account for the defendant having told Mr. Gibbes and Mr. Hobson that he had had St. Vitus's Dance? Roger, we know, never had St. Vitus's Dance; we know that Arthur Orton had it; he had it from his boyhood. How shall we explain the introduction into the Wagga-Wagga will of names known to Arthur Orton, unknown to Roger Tichborne? When called upon unexpectedly to say in what ship he sailed from Europe, and at what time, instead of naming the ship in which Roger Tichborne sailed, he named a ship in which Arthur Orton had sailed; and instead of naming the time at which Roger Tichborne left England, he named the time at which Arthur Orton left. Whence should the knowledge of the ship, the 'Jessie Miller,' in which the defendant stated in his statutory declaration that he had left England, have reached Roger Tichborne? No motive for misrepresentation in these respects being suggested, you must judge whether the inference can be resisted that the man who made statements consistent only with the knowledge of Arthur Orton was Arthur Orton. If you think the explanation which you have heard one which reasonable and sensible men can adopt, and it carries conviction home to your minds, by all means adopt it; but if you look upon it as the mere production of ingenuity or fancy, you will be guided accordingly. Nor should the fact be altogether lost sight of that, according to the entry in the pocket-book, as the defendant originally conceived the incidents of his story, not Melbourne but Hobart Town, where Arthur Orton first landed, was to have been represented as the place where the shipwrecked Roger was set on shore on Australian territory.

All these things ought to be matters of serious consideration, in order that you may determine on which side lies the truth. The witnesses who come to say they have seen Castro and Orton together, as two distinct persons, at one and the same time, may be telling you the truth, or they may be deceiving you, or they may be mistaken themselves as to the identity of one or other of these two persons they say they have seen: the staggering facts to which I have called your attention remain, and their effect must be taken into account in determining the value of the evidence as to identity.

Then again, when the defendant comes to England, he begins by inquiring, as he is coming up the river, after one Fergusson, a former pilot of the Dundee steamboats—the boats by which the Shetland ponies used to come to the Ortons. He goes to Wapping the very first evening he arrives. You must consider whether that can be explained otherwise than on the hypothesis of his being Arthur Orton. Has any other solution or explanation been offered? or does any occur to you? He goes there in secrecy and darkness; he keeps the whole matter concealed; he takes care that neither his friends nor his advisers shall know of his relations with the Orton family, and when the thing is discovered, or at all events believed to be discovered, he meets the suggestion of his intercourse with the Ortons by a positive and unqualified denial, which denial he is constrained to admit was false. Yet in the meantime he had been corresponding with them, and after the Arthur Orton theory had been started, had been secretly supplying some of the family with money. Why all this, unless he was Arthur Orton? Again, if you believe the evidence, on what other hypothesis can we account for or explain his minute and accurate knowledge of Wapping, and of the former neighbours and friends of the Orton family, of things with all of which Roger Tichborne must have been wholly unacquainted?

To these considerations must be added—to make the Orton case complete—that Arthur Orton had the two personal peculiarities, relied on as identifying the defendant with Roger Tichborne—the spasmodic movement of the brow, and the inclination of the knee inwards—facts which, if the defendant's claim is founded on imposture, may at once account for so many persons having been satisfied as to his identity, and, possibly, for his assumption of the person and character of Roger. Then comes the comparison of handwriting, to which I have carefully called your attention. Are you satisfied of the identity of the writing? If the handwritings are not the same, there can be no better proof that the men are not the same; but the converse equally holds good. Is the handwriting in Mrs. McAlister's book unmistakably that of the defendant? Is the punctuation, in the strange use of the full stop for the comma, the same? If the

handwriting is the same, can we, otherwise than on the supposition that the defendant is Arthur Orton, account for the fact that the writing in that book—a book lent by Mrs. McAlister to Arthur Orton, or, as she says, to the defendant—professing, as it does, to be written in the name of Arthur Orton, is in the handwriting of the defendant? And, again, how shall we account for the very significant fact of his writing in the name of Arthur Orton to Orton's sister in his own undisguised handwriting, and that the sister accepts the handwriting as her brother's? To which should be added that, writing as Arthur Orton, he appends to his signature the "rubrica," or sign, which Orton, as we know from his letters, had the habit of attaching to his signature—a habit beyond doubt acquired from his residence in South America, where this practice—one of Spanish origin—is of common occurrence.

And to these circumstances must be added the fact that, notwithstanding the pledge allowed by the defendant to be given on his behalf that he should attend on the execution of the commissions in Chili and Australia, in order that the witnesses who had been acquainted with Arthur Orton might have an opportunity of saying whether he was the man they had known by that name, having left this country with the apparent design of proceeding to Chili, he allowed his counsel and attorney to go by sea, professing his intention to go overland, and then, having proceeded only a part of the way, quietly returned to England, and afterwards stated on the former trial that when he left this country he had no intention of going to Chili at all. The suggestion, of course, is that the defendant adopted this line of conduct because he was afraid to face these witnesses. The defendant's explanation, as you will remember, was that he was prevented by illness from going further than he did. Whether that statement was a true one you must judge.

Then there was the evidence of Doña Hayley, that Arthur Orton had his initials, A. O., tattooed upon his arm. She tells us that on seeing tattoo marks on his arm she inquired what they meant, when he explained that they were the initials of his name. The defendant has a scar on his arm, as to which we are told that, though it may have been caused in some other manner, it may have been occasioned by cauterisation of the skin. Has the defendant given any satisfactory account of it? All he can say is that it may possibly have been occasioned by tight bandaging when he broke his arm in Australia. But a man sees his own arm too frequently to admit of such a mark having been upon it without his knowing when it first came. Is it possible that such a mark can have been created without his having a more positive knowledge of its origin than the defendant has shown? If the existence of this scar, coupled with the evidence of Doña Hayley, should lead you to the conclusion that it has been



produced by artificial means, resorted to in order to get rid of some previously-existing mark, you have here a fact tending strongly to confirm the belief that the defendant is Arthur Orton.

Then there is the evidence of the same witness that the Englishman in Australia, whom she declares to be the defendant, told her that his name was Arthur Orton, that his father was a butcher in London, and that two of his sisters were named Ann, and a third was named Isabel, which is the Spanish form of Elizabeth, and a fourth Matilda—the fact being that one of Arthur Orton's sisters was named Mary Ann, another Margaret Ann, and the third Elizabeth, and that a fourth, now dead, was named Matilda. It being difficult to suppose that the witness can have acquired this knowledge from any other source than that to which she refers it, what is the inference that you will draw from this evidence? If there was, as she tells us, but one Englishman at Melipilla, and it is true that these statements were made by him to the witness, it would appear to follow that the party making them must have been Arthur Orton.

But now let us come to the far more important question of whether the defendant is Roger Tichborne; because the question whether he is Arthur Orton is only subordinate to that larger question, which, if the Orton case should remain unsolved, yet remains to be considered and dealt with by you. Let us look at all the facts from the beginning of the time the defendant came forward. In the first place it was natural that those concerned should say, "Many long years have passed and no tidings have come of Roger Tichborne; no one has heard of him; all those connected with him, with one single, solitary exception, have long been persuaded of his death; you come upon us as one risen from the dead. Give us some account of how you were saved, where you have been, what you have been doing." Of course, he was under the necessity of affording some explanation in answer to an inquiry so obviously reasonable. It was necessary he should explain these things before he could invoke the aid of courts of justice to assist him in making good the claims he was about to put forward. "Tell us how you were shipwrecked; tell us that which no one has yet known, how the 'Bella' went down; tell us how you were saved; tell us what has become of you since." He begins with the shipwreck, and he tells a story which no man in his senses can believe—a story which nautical experience and knowledge at once condemn—a story which his own counsel cannot ask you to accept. The story that the ship, with twelve feet of water in the hold, should have got into that condition without anyone knowing what was going on, or that the captain should have been walking the deck, unconscious that the vessel was in that condition, is what no sailor, or even a landsman, assisted by the knowledge and experience of sailors, would adopt. "What became of you

next?" Then he tells the story of how they betook themselves to the boats, and how the compasses and the ship's papers, and all the provisions and water, upon which alone depended the possibility of preserving life, were placed in the one boat, and how the other had to follow and take its chance of keeping company—how they followed for two days and nights, till they lost sight of the larger boat. Again, that story is condemned on its own inherent incredibility, with this additional difficulty—that the boat to which he represents that the captain and mate, with the rest of the crew, betook themselves, with the compasses and papers, the provisions and water, is found, bottom upwards, in the immediate vicinity of floating wreck which undoubtedly belonged to the vessel; so that the statement that that boat had been rowed away two days and nights in an opposite direction to the wreck seems entirely to fall to the ground. No one, again, could believe that story, and the learned counsel for the defendant was constrained to give that up also. He ascribes all these statements to the erratic imagination of his client. But we naturally ask, could Roger Tichborne have been mistaken as to these things? Could he have failed to know, or, knowing, have failed, having no possible motive for deceiving us, to inform us truthfully, of particulars so essential to the credibility of his claim to be Roger Tichborne? Then we come to the saving ship. Here again we have the extraordinary statement that the defendant was three months on board that vessel, and yet cannot tell us with certainty the name of the vessel, or that of the captain or her owners, or the place from which she came. He accounts for this by saying he was ill; but although he might have been ill for a time, he must certainly have been well long before the vessel reached its destined port, having been perfectly well when he landed; yet he could not say for certain whether the ship which picked him up was the 'Osprey' or the 'Themis'—putting forward at one time the one and at another the other; nor can he tell us the name of the captain, or whether he settled with him, or what was the state of things under which they parted. And then we have the additional fact that, from that hour to this, with the single exception of the trumped-up case of Luie, there has come no voice from sea or land to confirm the defendant's story—no one, either of the crew that was saved or of those on board the saving ship—although, according to the defendant's account, there were numerous persons on board—having come forward to bear witness to the truth of his story—a story which has attracted attention all over the world.

But this is by no means all. Arrived thus far, we find ourselves involved in the difficulty arising from the uncertainty as to the ship by which the defendant alleges that he was saved and brought into Melbourne—all the evidence bearing upon which subject, from a

sense of its great importance, I brought carefully before you. Did a vessel called the 'Osprey' arrive at Melbourne, at a time which would correspond with that at which Roger Tichborne, if brought there at all, must have reached that port? If so, did the 'Osprey'—or, if there has been any mistake as to the name, did any other vessel—bring in the shipwrecked crew of the 'Bella'? If so, was Roger Tichborne with them? If the answer should be in the negative, the whole foundation of the defendant's case is irretrievably gone. If it should be in the affirmative, this difficulty, otherwise insuperable, no doubt disappears. But it by no means follows, as some people seem to suppose, that the identity of the defendant becomes thereby established. For, as I pointed out on a former occasion, the defendant may have become acquainted with the leading incidents of the story, and, if induced by the non-appearance of Roger Tichborne to come forward, may have adapted them to his own purpose. If, therefore, though the fact should be established that Roger Tichborne actually landed at Melbourne, the general facts of the case should, upon full consideration, conclusively establish in your judgment that the defendant cannot be Roger Tichborne, the fact that Roger was saved could not alone be considered as conclusive in the defendant's favour. And here it is that the defendant's account of the circumstances of the shipwreck of the 'Bella,' and the rescue of himself and his companions, to which I was referring just now, becomes so material. For it is obvious that it is of these things—things unlikely ever to be effaced from living memory—that we should expect an account from the man who had gone through them. If the man who asserts himself to have been shipwrecked and rescued can give no account of the circumstances under which these things happened to him, or, which is the same thing, gives us an account on the face of it so fictitious and incredible that the legitimate inference is that he in truth knows nothing about it, could we believe him the more because it turned out that the man he professes to be, though long believed to have perished, was in fact saved, and afterwards disappeared? But, in the absence of any trace of the presence of Roger Tichborne in Australia except in the statement of the defendant, can you believe that Roger was saved and landed there? especially when it is borne in mind that the probability is that, if those on board the 'Bella,' did not go down in her, but betook themselves to the boats, Roger Tichborne would have followed the captain, and have gone with the larger boat, which was found, bottom upwards, in the immediate vicinity of the wreck.

The defendant next tells us he landed at Melbourne. He has to account for himself between the time at which, if he ever landed there at all, he must have landed, and the time of his coming forward; and he tells us that he was three years and upwards as a stock-keeper,



first at Boisdale, and then at Dargo, then at Boisdale again; and if that part of the story falls to the ground, if that turns out to be false, what becomes of the whole superstructure of the Australian life which is founded and built upon it? And yet, with those books before you from Boisdale, confirming, as they do, the evidence of Mrs. McAlister and her husband, can you come to the conclusion that the defendant was there as Castro, or, if there at all, in any other character than that of Arthur Orton? Is there the slightest trace of a Castro there? If the effect of Mrs. McAlister's evidence and the books, carefully kept and to all appearance genuine and true, is to satisfy you that the defendant as Castro never was at Boisdale and Dargo at all—if the view you take of it is that he has adapted to his own case the circumstances of Arthur Orton's service there, what becomes of the whole case? We have three years and upwards wholly unaccounted for.

Let us pass on. The defendant tells us he left Boisdale and Dargo, and led a wandering life, acting as a horse-breaker, and again as a stock-driver and butcher's man, and then set up as butcher. How should that have entered into the thoughts of Roger Tichborne? In addition to that, we have to look at the life of hardship, toil, privation, and at times of distress, through which the defendant represents himself to have passed. Upon what possible hypothesis can we conceive that Roger Tichborne would have adopted that life? Let it be granted, if you please, that he was a man of eccentric disposition—although if we except this part of his alleged conduct, I can see no trace of eccentricity—let it be supposed that he was a man capable of betaking himself to a wild and adventurous life, being sated, we will assume, with the pleasures and enjoyments of the life which he had previously led. But was this a life of adventure and interest? Was it a life which a man would adopt from any of the somewhat strange but still elevated feelings which have induced men to quit society and betake themselves to the desert? Do you find anything of that sort in it? It is the commonplace life of Arthur Orton. The defendant represents himself as having followed exactly the life which Arthur Orton would have followed—which anyone going out to find employment under similar circumstances in that new world, because it might be wanting in this, would have led. But it is just the life which, judging from experience, a man in Roger Tichborne's position would not have submitted to. For, we have to ask ourselves, why should Roger Tichborne have led this life? Why should a man in his position, with an independent fortune of his own of 1,000*l.* a year, which no one could touch—the heir to a title and to large estates of at least 20,000*l.* a year—lead this species of life as stock-keeper, or butcher's man, or butcher, or horse-breaker, out in Australia? Very honest occupations if a man honestly pursues them, but not occupations which you would expect a man of rank and fortune to adopt. For

what imaginable purpose? and from what possible motive? What is the suggestion? What account does the defendant himself give of it? The only reason he assigns is that he did not intend to come back to Europe until his father died. But how long was he to wait? Would not a man under those circumstances have taken some means to keep himself informed of whether his father was still living or not? And then for this supposed determination not to come back to Europe or England so long as the father lived, what authority do we find in the letters of Roger Tichborne? He intimates no such intention. All he says is he shall not be much at Tichborne, and will not reside there as long as his parents are alive—that is all he says. His letters from South America clearly intimate an intention, though not of immediate, yet of eventual return. And then there is another consideration which I think must not be lost sight of. If there was one person in the world whom Roger loved, it was his brother Alfred. One sees in his letters about his brother that he really was fond of the boy, very fond of him. He always speaks of Alfred with playful tenderness, which is about one of the best forms in which affection can show itself. Could Roger, with his acquaintance with the dispositions of the property, fail to know that when his father died, if he gave no signs of life, his brother Alfred would step naturally, in the ordinary course of things, into the possession of the title and estates which he would be supposed to be entitled to? Could he have failed to know that, grown to man's estate, Alfred would form a union with some lady in his own position in life? Could he fail to appreciate the humiliation it would be to his brother and his brother's wife and children, if, having assumed the title and had the enjoyment of the estates, they had to step down from the position they had taken, and to give up both the one and the other? No brother could fail, I think, to be conscious of the false position—the painfully false position—in which he was placing, or possibly placing, his brother, by allowing that brother to take a place he ought not to assume, and from which place he would be displaced, if the rightful owner afterwards came forward. Again, it seems difficult to bring oneself to believe that a man in Roger Tichborne's position, if living, would have allowed years and years to pass, and his father, a man already very far advanced in years, to go down to his grave, without ever taking the slightest trouble to inform himself whether the father was alive or not. Again, Roger Tichborne was an indefatigable correspondent, always anxious for news of home. To the very last he begs each person whom he addresses to write to him at the earliest moment in return. Can we suppose that, because he found himself in Australia, he would have abstained for a long series of years from all communication with home, and would have knowingly left father, mother, and friends in horrible uncertainty as to his fate? Can we

suppose him to have been wanting in the common feelings of our nature? His was not the case of a man driven into exile by the unkindness of relations or the abandonment of friends, under reverse of fortune, or the sense of desperation which sometimes leads men under such circumstances to disconnect themselves from all former associations, and to renounce for ever the ties which bind us to the world in which we have lived.

Then we find, further on, that the defendant makes a marriage which it is difficult to suppose that Roger Tichborne, unless led away by some strong passion and infatuation, such as does not appear to have existed, would have made. It is a marriage which we cannot suppose he would have formed, if he had intended at any time to come back to this country. Is there anything to show us that he did not intend to come back to this country? The manner of its solemnization is consistent with its being the marriage of a Dissenter, but not of a Roman Catholic. Conscious of this, prior to coming forward as Roger Tichborne, he has his marriage solemnized again according to the Roman Catholic rite; and on signing his name to the register, we have, as I have already pointed out, the remarkable fact that in writing the name of Tichborne he was about to write it "Titchborne," and only held his hand when the "t" was partially formed; the half of it remains visible. Could Roger Tichborne have done this? Again, the statement of the age, while it agrees with that of Orton, does not agree with that of Roger Tichborne by several years. Again—though it is touching on the same subjects and going over the same ground, yet it applies to this part of the case as well as the other—can we persuade ourselves that Roger could have written that Richardson letter? What motive can be suggested? what purpose can be conceived? In no particular have the explanations of the defendant, I am sure you will agree with me, been less satisfactory than in respect of this remarkable letter.

Then we have him in communication with Mr. Gibbes, and see what occurs. He is ignorant of his birthplace; he asserts that his father had a seat in Dorsetshire, when his father never had one there at all. Called upon to make a will, he inserts the fictitious names of properties which have no existence. He puts in the names of persons whom Roger Tichborne never knew. And then we have the extraordinary circumstance that he does not know the Christian names of his own alleged mother. Nor would he seem to have been better acquainted with her personal appearance, if Mr. Gibbes speaks the truth when he says that, on Mr. Turville asking him what sort of person Lady Tichborne was, he answered that she was tall and stout, and like Mrs. Butts, of the Metropolitan Hotel, who, we are told, was a big, burly woman—Lady Tichborne being, as we know, not only the very reverse of big or burly, but leanness itself. He tells



Mr. Gibbes that he has had St. Vitus's Dance ; he tells Mr. Gibbes that he has been educated only by snatches by a Jesuit priest or a Christian brother, I care not which, for it matters very little if neither one nor the other is true. Afterwards he says he was educated at a school at Southampton, which we know was not the case with Roger Tichborne. He says his brother was educated at Winchester College, Yorkshire. There was no such college in existence. He ignores altogether the three years of Roger's life at Stonyhurst. He ignores entirely the three years' life in the army. When he is told by Mr. Gibbes, in his astonishment that such important events in Roger's life had never been communicated to him, that his mother had said he had been at Stonyhurst, and had been an officer in the army, he peremptorily denies both, and says he enlisted in the 66th regiment of cavalry, because he had got into some pecuniary difficulty or scrape ; that he was but thirteen days in the army, and that at the end of that time he was redeemed by his father and shut up at home until the month of—what ?—the month of November, 1852—the identical month in which Arthur Orton sailed from London, but not the month, by many, in which Roger departed from this country. You must judge whether these things are reconcilable with his identity with Roger Tichborne.

Then he comes to England, and the same observations that apply with reference to Arthur Orton apply in the opposite direction with reference to Roger Tichborne. We have to ask ourselves with regard to his proceedings several most pertinent questions. Can we suppose that Roger Tichborne could have known anything of the former pilot of the Dundee steamers ? Can we believe that he would have gone down to Wapping on the very first night of his arrival in this country ? Can we suppose that, without any conceivable motive for concealment, he would have had recourse to fiction and fraud, and in one sense to forgery, to conceal who he was from the Orton sisters, with whom he entered into correspondence, and from whom he says he was desirous to obtain information with regard to the Orton family ? Can we imagine Roger Tichborne would have done these things ? For what purpose ? With what design ? Has any explanation of this strange proceeding, satisfactory to your minds, been afforded ? Are you satisfied with the explanation given at one time, that he was desirous of obtaining information about the family, to be conveyed to Arthur Orton, but which information he cannot say he ever transmitted ?—or with that given at another, that his object was to assist the family, when he tells you that he purposely put them on a false scent, in order to get rid of them, and rendered them no assistance till he stood in need of them ?—or with the statement made at another time, that he went down to Wapping to ascertain whether Arthur Orton had arrived in this country at the same time as himself ?

And here, again, how shall we reconcile the minute acquaintance with Wapping shewn by the defendant with his being Roger Tichborne? How should the latter have possibly become possessed of such knowledge? These are the real, substantial difficulties connected with this part of the case with which the learned counsel for the defendant should have grappled, if he could, but of which I have hitherto heard no solution offered which our reason can approve of.

Then we find the defendant, instead of seeking out his family and friends, or at all events his alleged mother, first going down to Gravesend, unknown to any one but Mr. Holmes, his attorney; then going down clandestinely to Alresford, as it were to reconnoitre the place, having Bogle down, apparently to assist him in so doing; staying there at first under a feigned name, and, so far as he could, concealing himself from his relations and former friends; holding no communication with either, not even with Lady Doughty, with whom Roger Tichborne corresponded down to the time he went on board the "Bella," or with Mr. Gosford, the friend in whom Roger placed such unreserved and unbounded confidence, and who we should have expected would have been the first person Roger Tichborne would have sought out. But Mr. Gosford seeks the defendant at Gravesend, and has an interview with him, at which, if you can trust Mr. Gosford, the defendant showed a striking want of knowledge of certain remarkable incidents of Roger Tichborne's life. He keeps aloof from his family, and though he accounts for this by referring to his mother's injunction not to communicate with anybody until he had seen her, but with the utmost dispatch to seek her presence, he notwithstanding allows day after day to pass away, while he is down at Alresford, looking about Tichborne, and holding communication with the tenants and people there. And when at last he does go, in what form does he present himself? Instead of the son rushing to the embraces of the mother, he takes with him his solicitor and a brewer's commission agent to be present at the first interview with her; and then you have heard the account of how, instead of rising to meet her, he lies down on the bed and turns his face to the wall. Are these things which you can reconcile with a real, undoubted son or not? Then he comes back and has interviews with members of the family—interviews sought by them, not by him, with the single exception of a letter addressed to Mr. Henry Danby Seymour, which letter in itself is pregnant with matter operating to the disadvantage of the defendant. It is the letter in which he addresses him as "Uncle," and reminds him of the Poole election, and of his having been invited to stand as a candidate. A meeting takes place with Mr. Seymour. Is the result satisfactory? At that meeting he knows nothing of the old friend, the Count de Mandreville, and fails to recognise the handwriting of his alleged

father. Another meeting takes place with some of the members of the family at Croydon, which is followed by a subsequent one; and if you believe the representations of the witnesses at those meetings he failed to know the prominent members of the family—that he mistook Lady Radcliffe for Mrs. Townley, and Mrs. Townley for Lady Radcliffe, and that on the second occasion he had an opportunity of seeing his aunt, Mrs. Nangle, and did not know her—all these are strong things indeed to shew that he is not the man. Of course that all depends on the credit you give to the witnesses, and on the weight you attach to their evidence. Then comes the fact that with the exception of Lady Tichborne and Mr. Biddulph, every member of the Tichborne family, with Lady Doughty at their head, refuse to acknowledge him, and declare him to be an impostor. The Gosfords, Roger's old and intimate friends, do the same. Several connections of the family in like manner pronounce against him. The majority of his brother officers fail to find in him their former comrade. All those who had known Roger in France pronounced against him. On the other hand, the defendant, in the course of the ensuing months, has interviews with a variety of persons, to whom Roger Tichborne had been known, and who were satisfied that he was Roger Tichborne, either from his personal appearance, or from his knowledge of things that had happened to or in connection with Roger Tichborne. He is especially successful with members of Roger's former regiment, the Carabiniers—the majority of Roger's brother officers rejecting him, it is true, but some of the officers and a very considerable number of the non-commissioned officers and soldiers declaring him to be Roger Tichborne. Above all, the recognition of him by Lady Tichborne as her son, and that of Mr. Hopkins, the former family solicitor, subject to such observations as you may think properly attach to it, were calculated materially to support his cause.

Time passed on, and the period arrived when the defendant had to exhibit in open court his knowledge of the past events of Roger's life. You have heard the evidence which he gave. I have had occasion, I fear, to weary you by repeating it, but it seemed of the very last importance that you should have all the statements of the defendant fresh in your recollection at the last moment. What is his knowledge of the life of Roger Tichborne at Paris? He knows one or two circumstances, but there are others—and those important ones—of which he knows nothing, and which it is very difficult to suppose Roger Tichborne could have forgotten. The issue which he had as a boy is converted into a seton. The old friend, whose pet he was as a boy, is unknown. The second tutor, who was tutor for at least three years, is not known even by name. The confessor to whom he was in the habit of confessing is not known



even by name; he puts forward another one to whom he never confessed in his life. The journeys that he took with his father and mother are, when he is first examined, with a single exception, totally unknown, and though he says there is one journey which he went, even with this he can connect no memorable incident; of the remarkable incident connected with that journey he is, when first examined, wholly unaware. The last three or four journeys—and those the most important ones—appear to have been totally unknown to him. The streets and the residences are jumbled together in the most extraordinary way. The house in the Rue St. Honoré is supposed to have been in a part of the street where it never could have been, and things are supposed to have been seen from that house which never could have been seen from it. The early residence is made the last, and the last the first. The Rue des Pyramides, the last street where the father and mother lived, and where he took his last farewell of them before he left Europe, is said to have been the street in which Chatillon taught him as tutor—Chatillon never having taught him after 1844; while the Rue St. Honoré, where the parents never lived after 1844, is supposed to have been the last street where they lived in 1853.

So much for Paris. We go on to the reminiscences of Stonyhurst, and what are they? He denies that it was his father who took him to Stonyhurst. We know it was. He tells us he resided for the first twelve or fifteen months while he was there in a cottage. Do you believe that to be the fact? If it is not, what becomes of the defendant's recollection of Stonyhurst? Then he tells us that after he ceased to live in the cottage, he lived in the college. We know that, except during the first month Roger was at Stonyhurst, the philosophers lived, and Roger as one of them, in an entirely separate and detached building, the so-called "seminary," and never for a day resided in the college. Of the seminary he knows nothing, not even the name, but supposes that the "cemetery" is meant when the seminary is mentioned. As to the studies it is unnecessary to remind you of the jumble he made of Hebrew, Greek, Latin, mathematics, and chemistry—how he stated that he attended Hebrew lectures, which the evidence tells us Roger never could have attended—that he learned Greek sufficiently to construe parts of passages in the Greek Testament, whereas there is no reason to believe that Roger Tichborne ever learned even the Greek alphabet—how, whereas we know that Roger learned Latin and made some progress in the Commentaries of Cæsar, and knew something of history, he declared his belief that Cæsar was a Greek, and his Commentaries were written in the Greek language—whether in prose or verse he was unable to say—how, when a copy of Virgil was put into his hand, having looked at it, he stated his belief that

it was Greek—how, while we know that Roger Tichborne toiled at Euclid and the elements of mathematical science not only at Stonyhurst, but for many a month afterwards, the defendant did not even know what the term “mathematics” meant, or that he had ever read Euclid at all, or that Euclid had anything to do with mathematics—lastly, how, Roger having attended a course of lectures on chemistry, the defendant’s notion of that science was that it related to “herbs and poisons, and the mixing of medicines.” It is unnecessary to do more than by a passing reference to recall the defendant’s answers on these subjects to your mind. Of the masters who taught Roger he knows nothing, and he says those did teach him who never taught Roger a word. Of Roger’s fellow-pupils he knows but very little. He speaks but of one Arundell; yet Roger’s two cousins were at Stonyhurst all the time he was there. He mentions Everard Arundell, but did not know whether it was Lord Arundell of whom he was speaking. Yet as Everard Arundell was the last in the remainder under Roger Tichborne’s will, Roger must have known the difference between the two brothers. Of the games, of bandy, the favourite game of Roger, and to which he was particularly addicted, he knows nothing. He fancies it is a nickname or a building. Of the vacations he at first knew positively nothing. He put the vacation, which was in August, at Midsummer, and then transferred it to the winter. Having at first put it at Midsummer, but finding from the cross-examination that that was wrong, he says August; but he then makes the main vacation in the winter, and reduces the summer vacation, which was the true vacation of that institution, to nearly a third of its length. Are these things sufficient to establish the identity of the defendant with Roger Tichborne? Are these recollections — is this amount of knowledge, in your judgment, sufficient, or has it the opposite effect?

But even if the defendant had shown a far greater knowledge of Stonyhurst, must not the inference have been that that knowledge had been acquired from without, when it is remembered that when he was in Australia he knew nothing of Stonyhurst, and denied that he had ever been there, asserting that he had been educated at Southampton—as we find not only from the evidence of Mr. Gibbes, but also from the document formally drawn up by Mr. McCarthy, in the presence of the defendant, which document we have had produced before us. When told that Lady Tichborne had said in her letter that her son had been educated at Stonyhurst, having made no mention of Stonyhurst in his previous account of himself to Mr. Gibbes, he positively denied the fact. What becomes of any Stonyhurst reminiscences if the man in Australia, before he set foot in England, was utterly ignorant of having been at Stonyhurst at all? When he overcomes any difficulty in the mind of the drawing-master as to his identity by reminding him of a circum-

stance which I need not further refer to, what becomes of this solitary instance of Stonyhurst recollection.

Then we come to the intermediate year during which he was undergoing a course of preparation for the army, and there again we find everything reversed. He has no knowledge of his having failed at the examination at Sandhurst; and having got hold of the fact that Roger studied in London—a fact which he would easily get from the letters to his father and mother—he supposes that this must have been anterior to the examination. He is totally ignorant of having studied with Mr. Moberley, and when the name of Owlesbury, which Roger must have known perfectly well, because he had written it twice over, and had gone again and again to Owlesbury to take mathematical lessons from Mr. Moberley, is put to him, he knows nothing of Owlesbury or Mr. Moberley; but afterwards, when an opportunity has been offered him of ascertaining how the fact stands, and he finds that Owlesbury is the place the name of which is pronounced Usselbury, he then says that, being Roger Tichborne, he did not know it under the name of Owlesbury, though coupled with the name of Mr. Moberley. He tells us that Colonel Greenwood “coached” him. The statement turns out to be wholly untrue. We know from Colonel Greenwood that he never at any time, or in any way, assisted Tichborne in his studies.

Connected with this period we have a fact not altogether unworthy of notice. When studying in London, in the summer of 1849, Roger Tichborne became, as we learn from Mr. Mansfield, a member of the Alfred Club. Mr. Mansfield, himself a member of the club, met him there, and learned from him that he had become a member of it. The defendant, on being asked if he had ever been a member of the club, denied the fact. Could a man who had been a member of a London club, like the Alfred, have wholly forgotten it?

Then we have his relations with the Seymour family, and he asserts that he sometimes called Mr. Danby Seymour and Mr. Alfred Seymour “uncle;” that he has written to them as such. We know that such is not the fact. He asserts that he spoke and wrote of Mr. Seymour as his grandfather. We know that Roger did not. He forgot, down to the time of the former trial, the butler’s cottage where he used to go to smoke; he forgot the name of the butler, although he was afterwards in the habit of frequenting the man’s house when he had set up as a lodging-house keeper in St. James’s Place, in London, that being the place to which Roger habitually resorted when he came to town. He knew little of the dying illness of Roger’s grandfather, Mr. Seymour. He does not know that Mr. Seymour died at Bath; he asserts that he died at Knoyle. He denies that he went to Bath to see him for the last time, though Roger is proved to have done so; yet one would have thought that the last farewell taken of a person who,



although not nominally his grandfather, always behaved to him as such, and showed him the kindness such a relative would show to his grandson, would remain in his memory ; but he is not aware that on that occasion Roger went in 1849 from Knoyle to Bath to take leave of the old man, who was then in the last stage of a lingering disorder, and whom he knew perfectly well he should never see again.

Then we come to his life in Ireland and the army. Are his recollections of his life there such as you would have expected? First let us take his recollections of Dublin. One circumstance connected with this part of the story is very striking. There was a lady there who was particularly kind to Roger Tichborne, a near connection, a sister of Sir Henry Tichborne's wife, Roger's aunt by marriage, and who showed him hospitality and friendship—I mean Lady Clanricarde. The defendant hardly knows her name. He thinks he may have met her at the Deases', whereas the Deases had no house at Dublin, but were there only from time to time as casual visitors. So that the mistake is a twofold one—that of forgetting Lady Clanricarde, and that of asserting that he saw her at Dublin in the house of a family who had no residence whatever there. He knows of having attended one levee, but he knows nothing of a prior one, or of having gone to two drawing-rooms: he is not aware of the difference between a levee and a drawing-room. Having been quartered, going on for three years, in Ireland, he gives, as Mr. Gosford tells us, the Curragh of Kildare as one of the places at which he was quartered—a thing impossible, the Curragh not having been used for the purpose till a much later period. Yet it is no doubt true that it is of this period of Roger's life that the defendant has the best information. He can tell us of many things connected with it. He knows the circumstance of Roger's servant, Clarke, being killed when Roger's horse ran away with him; he knows the circumstance of Roger's horse getting his bridle out of his mouth, and, running away with his rider, imperilling Roger's life; he knows the various tricks, or many of them, the practical jokes played on Roger. He knows that the donkey was put in his bed, and, what is more, he knows that a man of the name of Davis was the man who was on duty that night as sentinel, and who was called in by Roger to come and take the devil, as he supposed it to be, out of his bed. He knows of having confined men, of having sentenced them to drill, for particular offences, and various things of that sort; he recollects, he says, after the long lapse of years, the names of the particular men, and the particular punishments that he awarded, giving instances of marvellous memory as it appears to me. He remembers having given a man whom he sees three days' drill for oiling his horse's legs to make them shine. He remembers an incident of another man being complained of for having his sword

rusty. He recollects the number of a trooper's horse, associating the horse with the name of the individual trooper. He recollects a glandered horse having been kept in a particular stable under the charge of a particular man. He recollects the circumstances which led to the barrack-master marrying a young wife. He knows the movements of the regiment, and who were the officers in it. He is able to speak to the personal appearance of some of the latter—which knowledge, however, may possibly have been acquired from the sight of some collection of regimental photographs. We have numerous instances of knowledge of this sort, and these simple-minded Carabineers come, and upon putting questions of this kind to him, and receiving answers which they know to be correct, or upon his asking them whether they remember such and such things, which of course they did remember, these men, influenced also by the appearance of the peculiarities of the twitch and the walk, rushed to the conclusion that he must be Roger Tichborne. But, exercising herein the careful discrimination, the necessity of which I pointed out in the outset, can we be satisfied that the information thus exhibited came from within and not from without? We find that he surrounds himself with sources of extraneous information. Why, we may ask, does he take Bogle into his service, or rather into his household—for service he rendered none? For what earthly purpose, so far as we can see, does he bring this old man from Australia to England? Can any other be suggested but that of having Bogle at hand when he needed the information which Bogle could afford? For what purpose does he take into his service Carter, the man who was Roger Tichborne's groom for so many years, and knew all about his military life? For what purpose does he take Roger's regimental servant McCann, a worn-out man, who could render no service, and did render no service, into his household, but for a similar purpose? These are questions we must ask ourselves, and see whether we can find any satisfactory answer. And of course the suspicion that the knowledge exhibited has been derived from extraneous sources becomes the stronger if we find that the knowledge which he exhibits, and which is such as he had the opportunity of thus acquiring from the persons by whom he had surrounded himself, stands in striking contrast to the want of knowledge exhibited on other subjects, such as Paris and Stonyhurst, and his preparation for the army. But, lastly, what becomes of the knowledge of all those details, if you carry back your mind to the statements made in Australia? The same man who recollects the number of the trooper's horse, and so many petty incidents of Roger's military life, even to the men whom he punished, and the punishment he inflicted on them for being late, or the like, before he came to England, before he had these adventitious aids to which I have been referring, did not know that Roger Tichborne had been

in the army at all. Can we suppose, if he had known that Roger had been three years an officer in the 6th Dragoon Guards, he would not have told Mr. Gibbes so? I can hardly believe it would occur to any one for a moment to say that he had a purpose in deceiving Mr. Gibbes as to this. He may have had a purpose, no doubt, in telling Mr. Gibbes some things which were invented at the moment, and therefore necessarily incorrect, as in the matter of the Wagga-Wagga will. Whether that was, as he has said, for the purpose of keeping Mr. Gibbes in ignorance of what his property was, or for the purpose of inducing Mr. Gibbes to believe that he was the true man, when he wanted to raise money from the Australian Bank through Mr. Gibbes, and was therefore obliged to give Mr. Gibbes answers to the questions which Mr. Gibbes put, you must judge. But in the matter we are now considering, if he knew the truth, there could be no possible motive for deceiving Mr. Gibbes; and, therefore, when, in giving an account of his life, he omitted to make any mention to Mr. Gibbes as to his having been in the army, and when, Lady Tichborne having written to say he had been three years an officer in the Dragoons, on Mr. Gibbes telegraphing to him to know in what regiment he had been, he answers, the 66th; and when, on Mr. Gibbes and Mr. McCarthy interrogating him on the subject, he repeats that statement, and says it was a regiment of horse; and when, on Gibbes informing him of what Lady Tichborne had written, he says, "No, that is not true; I never was an officer in the Dragoons at all; still less was I three years in the army; I enlisted in a horse regiment, the 66th, as a private, but was only in it thirteen days, and therefore you must not ask me anything about cavalry drill"—what effect can we give to his knowledge of the minor incidents of Roger's military life? If the only conclusion you can arrive at is that when in Australia he knew nothing about Roger Tichborne having been in the army, what becomes of all the knowledge about small matters which he afterwards exhibits with reference to the three years' military life of Roger? If he did not know it in Australia, how could he know it here, except by the aid of those persons with whom he had surrounded himself, or possibly—I only put it as a possibility—by having found or obtained possession of diaries or of letters from Roger to his mother, when her papers came into his possession, in which some of those events had been recorded?

Again, as to the army. Is his knowledge of military things such as a man who had been three years an officer must have known? He does not know the difference between a troop and a squadron. He does not know the difference between close and open order. He does not know the meaning of the term *serre-file*. He trebles the strength of the regiment. Do you think it possible that Roger



Tichborne could have failed to know the name or the existence of Lord Fitzroy Somerset? Having been quartered at Dublin, would he fail to know the difference between the Lord Lieutenant and the Commander-in-Chief in Ireland?

From the army we follow the inquiry to the voyage to South America. The defendant knows of the voyage, and the ship it was made in. But he at first ignores the putting into Falmouth, and you must judge whether his explanation of how he came to remember it afterwards is satisfactory. He makes a strange jumble of the accident which happened to Roger Tichborne in the course of the voyage. He knows of the travels of Roger Tichborne in South America. His knowledge may have been genuine, and if it was it is remarkable; but it may also have been acquired. All the details are given in Roger's letters to his father and mother. I have pointed out the errors into which he has fallen in his account of what occurred in South America—more especially in his ignorance of a second journey to St. Iago. It is an essential part of his history that he was at Melipilla. In your judgment, was Roger Tichborne ever there? If you are of opinion that he was not, there is an end to all question of identity.

And, while on the subject of the defendant's memory, I should make this further observation, just suggested to me by my learned Brother, that when pictorial representations, which the defendant had not before seen, of places Roger Tichborne would have known, are exhibited to him, his knowledge entirely fails. Photographs and coloured drawings are shown to him of places with which Roger was familiar, and the defendant has no knowledge of them at all. A coloured lithograph of Bilton Grange—a mansion remarkable for its peculiar architecture—is shown him; he fails to recognize it. A photograph is shown him of Knoyle, exhibiting that residence with unmistakable truth—there is the window of the room which Roger occupied time after time for four years—each year's holiday brought him there—there is the cottage where he used to go to smoke, there are the places that would have been familiar to his mind, and the defendant knows them not. And when he is further tested by the important questions to which I am about to refer, how does he come out of the ordeal?

A most important test to which the defendant was properly subjected was his knowledge of the Tichborne property and the disposition made of it by Roger. That the defendant fell into woful confusion and error about it is, as we have seen, beyond all question. Could such ignorance have been exhibited by Roger Tichborne, either from his never having understood the settlements or the will which he himself made, or—though when in consultation with Mr. Burrows he showed a thorough understanding of the existing dispositions, and

the alterations he was about to make by his will—from his having fallen, from defect of memory, into the state of ignorance and bewilderment exhibited by the defendant?

Then came the inquiry into the relations of Roger Tichborne with Miss Doughty. Was the defendant's knowledge of them consistent with his being Roger Tichborne? Here we have the memorable events of January and February, 1852, and again those of June, either wholly ignored or presented to us in a confused and unintelligible form. The papers given to Miss Doughty are unknown, the three years' correspondence with Lady Doughty—so much of it having reference to his love for his cousin and his hope of marrying her—is as though it never had existed. To which it may be added that, on the present trial, his counsel was permitted, in his presence, unchecked and unproved, to represent Roger's passion for the girl he loved and sought to make his wife as the mere lust of animal desire, which he was ready to take the first opportunity to gratify.

And then, immediately connected with this subject, comes the sealed packet. When he is first asked about the sealed packet what happens? If the evidence of Mr. Gosford does not deceive us, he knows nothing of it; but it comes to his knowledge that that packet has been destroyed, and then he immediately represents it as containing instructions to his uncle's steward to deal with his uncle's daughter in a manner rendered necessary by her seduction by himself. He represents that he had seduced her. You have heard all the evidence about it, and the observations that have been made upon it. Do you believe it, or do you not? If you do not believe it, it is matter of powerful, though perhaps not conclusive, proof, that the man who put forward that statement, which, if an untrue statement is one of the most abominable that was ever invented by the wickedness of man, or the craft or subtlety of the devil, cannot be Roger Tichborne. For, if it be untrue, can you suppose that Roger would have recourse to such an invention in order to crush, to damn, to destroy the only woman whom in life he ever loved?—the woman for whom he had that affection and attachment which those papers which have so often been read to you manifest so powerfully; and who, let her even have shown herself his foe when he returned, it seems impossible to believe he would have sought to destroy and ruin by such a story as that, if that story is untrue. If, therefore, in your minds you do not believe it to be true, but believe it to be scandalously false, there is scarcely anything in the history of this case calculated to make more adversely and fatally to the prejudice of the defendant. Is, then, the defendant's history of it the true one? Did he seduce his cousin? Did she communicate to him her fear that she was with child? Did he deliver a paper to Mr. Gosford, such as he has told us of in his own evidence, or in either of the

inconsistent papers drawn up by him? Or is Mr. Gosford's the true version, and the defendant's the detestable and diabolical offspring of a bold and unscrupulous mind, invented for the base and wretched purpose of at once covering his own ignorance and crushing the woman, who of all others would have best remembered Roger Tichborne, and who was prepared to attest on oath that the defendant was not the man? I have done my best to place before you the materials for forming your judgment on this all-important question. It is now for you honestly and fearlessly to decide.

To the instances of defective knowledge which I have enumerated must be added the apparent absence of the general information, which, however inferior it may have been, we must take Roger Tichborne to have had, not only as exhibited with reference to the studies at Stonyhurst, but in the ignorance betrayed of the literary works which the latter possessed. What, for instance, shall we say of his supposing *Pierre Corneille* to have been one of the Fathers? Last, not least, what shall we say of the loss, in the course of only twelve years, of every trace of the French language, Roger Tichborne's mother tongue, and spoken by him by preference till the age of twenty-four?—more especially when we find that the defendant has retained the Spanish which he acquired in South America, and the knowledge of which in Roger Tichborne must have been, at the best, but small indeed compared to his knowledge of French. If such a result should be possible, does it seem within the limits of reasonable probability?

Thus, then, on so many of the leading incidents of Roger Tichborne's life we have indications of defective knowledge in the defendant, which stand in the way of our accepting him as the veritable man. Paris, Stonyhurst, the preparation for the army, the life in Ireland, the events at Canterbury, the dispositions of the property, his relations with his cousin—to say nothing of a variety of minor things—will afford instances of things, of which it is difficult to suppose that the remembrance could have been blotted out from Roger Tichborne's memory. On the other hand, the defendant has a knowledge of all the petty incidents to which I referred just now, and in respect of which, if the knowledge was genuine, we have such striking instances of memory. But then comes the question whether you can reconcile the fact that he has knowledge of these minor details, with the absence of knowledge as regards the great leading facts appertaining to the life of Roger Tichborne, except on the supposition that these minor things were within the knowledge of the people about him, while as to the far more material things, in which he was found wanting, he had no extraneous means of information, or was not prepared for the questions with which he was assailed? Is any explanation offered to you of this apparent anomaly? Says



the learned counsel for the defendant, "Memory is a strange thing; the mind of man is so strangely organized and constituted that you never can tell how any one of its faculties may work and manifest its operations. The strangest of them and the most difficult to follow and to deal with is memory, and a man's memory may be so constituted that he may have a faculty for remembering small things, while he cannot remember great." Well, to those who deal in metaphysical science there is nothing that may not be asserted, and possibly nothing that may not be more or less plausibly supported; but I must say that this peculiar form of memory is one with which my experience has not thus far made me acquainted. I should have thought that the great and leading events of a man's life were the things which would have made the deepest impression on his mind. I should not have supposed that a man would forget the things which affect his interest or his happiness, and yet exhibit a wonderful faculty of retaining every-day things, which, generally speaking, pass by unheeded in the flowing stream of life, and which, as they pass, leave no traces on the memory, unless there is something or other out of the ordinary way which happens to fix them in the mind. But I may be wrong. If you think so, by all means adopt the learned counsel's theory. Lastly, how are we to account for the numerous instances in which the defendant has told us things which are absolutely impossible? "Oh," says his learned advocate, "that arises from his habit of giving way to extravagant flights of fancy, and to a recklessness of assertion and disregard of truth." But if that be so, what shall we say when we find him in conflict with, I think, some twenty witnesses, or not far short of it, every one of whom must have committed perjury if the statements of the defendant are true? "Pray do not attach importance," says the learned counsel, "to anything he says, and which you see to be untrue. When you find him stating that which cannot be true, which everybody must feel cannot be true, do not pay attention to it. It is only a habit he has. History affords numerous instances of men who have been habitual liars." I quite agree with the learned counsel that there are men who are habitual liars. And it may be that, in addition to those who do not scruple to have recourse to falsehood, in order to work iniquity, or to satisfy the base and sordid desire of gain, or to gratify the dark and detestable passions of hatred and revenge, men have been known who, labouring under some mental disorder, have mistaken the creations of their diseased imaginations for reality and fact. Some men are said to lie from a morbid pleasure in lying, or in mystifying others or making fools of them. Some men lie from inherent love of mischief. But what is there which should lead us to suppose that Roger Tichborne was a liar of this sort? Witness after witness has borne willing testimony to the truthfulness of his character. He was loved

by his family, and esteemed and liked by his brother officers, as a man of honour and a gentleman. Can twelve years of Australian life, even if associated with Arthur Orton, have converted a man of truth and honour into one whom the learned counsel invites you to stamp with the hateful character of a liar?—forgetful, as it seems, of the effect which such a position must have on the numerous statements made by the defendant, and essential to his case, and on which he is at issue with the witnesses against whom the learned counsel has so lavishly made imputations of perjury.

But what shall we say to his defective memory in respect of the recollection of essential and important things? The great point made by the learned counsel for the defendant with reference to the defective knowledge which the defendant had in so many instances exhibited, and which would appear to render his identity incompatible with that of Roger Tichborne, is that, having led a life of intemperance and vice, disease had been the consequence; that his brain had become diseased, his memory disordered, his faculties impaired. What evidence is there of that? Should we be justified in assuming it in the absence of all proof, in order to account for the inability the defendant exhibits to tell us things relating to the leading incidents of Roger's life, such as we might reasonably expect from a man who came forward in the person and character of Roger Tichborne? What proof is there of a diseased brain, of an impaired memory? I know of none. There is no disease traced to Roger Tichborne which could have had that effect. Roger Tichborne no doubt at times drank more than was good for him; but that it ever affected his faculties is what no witness has asserted—is what the learned counsel never put to a single one of those who were best acquainted with Roger. His letters from South America certainly show no absence of mental power, any more than his great activity shows any want of physical strength and energy. But the best answer to be found to this assertion is this, that so far from showing a defective memory, the defendant exhibits, if we assume that the instances of knowledge he has shown are gathered from his own recollections, a memory of marvellous tenacity and power. He writes after twelve or fourteen years to a man in South America, referring by name—every name a foreign one—to people whom he says he had never seen but for one short fortnight or three weeks, enumerating fourteen or fifteen different people, speaking of them with reference to their personal peculiarities, and manifesting an accurate recollection of them all; and it turns out that these are not fictitious personages, the coinage of his own imagination, but actually living people who were in the flesh, and every one of whom was to be traced either as being still living or as having passed away. To my mind that is one of the most prodigious

efforts of memory that could well be conceived. I could understand it of one who was some year and a half or two years living among those persons, though, even then, it presupposes very considerable power of retention. But what shall we say of it in a man who says he was only there two or three weeks, and who remembers the whole of those names and the circumstances connected with each person? or what shall we say of a memory which remembers those other matters to which I have been calling your attention this morning, as to various things that occurred in his military life, relatively to which, if he really remembers them, he shows such a wonderful faculty of memory? But, gentlemen, is it not in truth to trifle with us to talk to us about disordered faculties and diseased mind or defective memory, as applicable to the defendant? I have read to you his cross-examination on all the points essential to the consideration of this case, and we have seen him struggling with the first law officer of the Crown, and baffling time after time the attempts of that distinguished advocate, in the course of that examination, to extract from him the information that he wanted to get from him, or to make him expose his ignorance of facts which Roger must have known. Did you see there any manifestation of disordered or impaired faculties? Was not the impression which was produced upon everybody's mind, on reading the long examination and cross-examination of the defendant, this—that he was a man of extraordinary intelligence, sagacity and shrewdness? Is not that the impression which naturally results from a perusal in print of the evidence then taken? It is not enough—the learned counsel should recollect—to start theories of this kind unless you support them by fact, or by reasoning which carries conviction to the mind; and unless the learned counsel has satisfied you that there is any reason for supposing that the intellect of his client is in the slightest degree disordered or impaired, then we come back to the question, whether the exhibition of knowledge, or want of knowledge on the part of the defendant, either in the spontaneous communications which he has had with different individuals, in his answers to questions put by them, or in statements coming from himself to them, or in his answers in court, has been such as you would have expected of Roger Tichborne? Does the knowledge displayed lead you to conclude that the defendant is Roger Tichborne? or the ignorance lead you to conclude that identity with Roger Tichborne is impossible?

The knowledge of the defendant of the events of Roger Tichborne's life, as a test of identity, being exhausted, another test is resorted to—that of personal peculiarities, and marks congenital or acquired. The defendant has two characteristic peculiarities—the nervous twitch or movement of the brow, and the peculiar walk



arising from the inclination of the knee inwards. It is by these that so many persons have been convinced of his being Roger Tichborne. It appears that, at all events to a certain degree, Roger Tichborne had both these peculiarities. Whether to the same extent as the defendant, is matter of controversy. According to the view of his relations and intimate brother officers, the alleged twitch amounted to no more than an occasional, though marked, raising of the brow when in conversation, and the turning in of the knee to nothing more than a slight inclination of it in walking, arising from weakness, and in no degree attributable to formation of the limb. But assuming both these peculiarities to have been equally present in Roger as in the defendant, we are not much further advanced towards the decision of the question if we find that the same peculiarities were common to the defendant and Arthur Orton, and that their existence in the defendant may, consequently, as well consist with his being Arthur Orton as with his being Roger Tichborne. The question whether Arthur Orton had these peculiarities becomes, therefore, as I have elsewhere explained, one of the most important questions in the cause.

Next as to marks. The defendant has a congenital mark—a brown mark on his side. Had Roger Tichborne such a mark? If he had, it would be a very strong, if not conclusive, fact in favour of the defendant. If he had not, the identity fails.

Roger Tichborne, as a child, was three years tormented with an issue, of which the scar would remain through life. The defendant knew nothing of this issue, but represented it as having been a seton, not by the use of the term only, but by a precise description of the process; and he is said to have simulated the marks of a seton. But the main question is, has he the mark of an issue on his shoulder? If he has not, he cannot be Roger Tichborne.

Roger Tichborne was bled, we know, in the arm on three occasions at least, and, from the marks which we are assured his arm exhibited, probably oftener. Besides this, at Canterbury, Dr. Moore opened a vein on each arm, and that failing, on each ankle, and that again failing, opened the temporal artery. Has the defendant the corresponding marks of having been bled? If not, can the marks have become obliterated—if such marks ever become obliterated at all—at the age which the defendant has attained? If these questions must be answered in the negative, it is obvious that the answer must be fatal to the identity of the defendant.

Again, was Roger Tichborne tattooed? Or is Lord Bellew perjured—suborned to commit as wicked perjury as can well be imagined? Is the tradition in the family a myth? Was what so many witnesses have seen a delusion, produced for the pastime of a silly youth?—a thing possible, indeed, but scarcely probable—and, unless the testimony of Lord Bellew is bought, suborned, and false,

a thing impossible. It is needless to add, that if Roger Tichborne was tattooed, the conclusion is inevitable. The defendant stands convicted. There is an end to the possibility of his being the man.

Finally comes the, to my mind, equally trying test—that of handwriting—upon which I have taken care you should have before you abundant means of forming your judgment. If there is nothing in common between the handwriting of the defendant and that of Roger Tichborne—if the two writings are in all respects essentially dissimilar—if the peculiarities of the one are wanting to the other, and *vice versâ*—more especially when the characteristic differences in spelling are taken into account, together with the difference of style, whether as regards composition or tone of thought—can the letters of Roger Tichborne, and those of the defendant, be the production either of the same hand or of the same mind?

And now, gentlemen, I have gone through all the observations on this case which I think it necessary to make. I have tried to bring it before you, as I say, as a great whole, satisfied that in that way only can it be satisfactorily dealt with. I have sought to lay before you all the facts connected with it, fairly, truthfully, and impartially, but nevertheless with a stern and solemn sense of the duty which it was incumbent on me to perform. I have been assailed from without by abuse from critics who have followed the inquiry with a foregone conclusion, arrived at without a due appreciation of the facts, which it requires much care and attention to master, and who appear to have the presumption to think that they know my business better than I do. I have been abused for placing the case before you, as it is said, in a partial and one-sided point of view. Gentlemen, I cannot invent facts or alter them, nor should I feel justified in submitting to you explanations or arguments which in my judgment are devoid of reality and substance. And in my opinion a judge does not discharge his duty who contents himself with being the mere passive recipient of evidence which he is afterwards to reproduce to the jury, without pointing out the weight of the facts and the inferences to which they properly and legitimately give rise. It is the business of the judge to adjust the scales in the balance, that they shall hang evenly; but it is his duty to see that the facts, as they present themselves, are placed in the one scale or the other, according as they belong to the one or to the other. It is his business to take care that inferences which properly arise from the facts shall be submitted to the consideration of the jury, with the happy consciousness that if he in aught goes wrong, there is the judgment of twelve men having experience in the every-day concerns of life to set anything right in respect of which he may have erred. But if the facts are such that, placed in the scale to which they respectively belong, the one

scale kicks the beam and the other goes down, the fault is in the nature of the case, and not in the conduct of the judge. If converging from every point the footsteps all tend towards a common center, and there meet, and if their measure corresponds with the foot-tread of the accused, it is the business of the judge to take care that that shall be brought to the minds and attention of the jury. I have long thought, and have more than once expressed the opinion, that a jury assisted by a judge is a better tribunal for the ascertaining of facts and the establishment of truth than a judge unassisted by a jury ; but I am perfectly satisfied that it is the business of the judge to assist a jury in the way I have sought to assist you—that is by placing the whole case before them—not only bringing before them all the facts, but also pointing out the inferences which appear to arise from those facts ; and I am satisfied that without this assistance on the part of the judge, the office of the juror is liable to be imperfectly fulfilled. I have yet to learn that it is the business of the judge to suppress facts because they make against the accused ; or to refrain from pointing out the conclusions to which the facts, as established by the evidence, properly lead—to suggest to the jury arguments or explanations of the unsoundness of which he is himself convinced ; or to adopt those of counsel when satisfied they are delusive ; or to refrain, out of tenderness to the accused, from exposing fallacies and sophistry, the hollowness of which he is able to see through, but which may have the effect of misleading minds less accustomed than his own to dissect and analyse evidence in dealing with facts, and to find the way, amid the conflict of testimony, to the ascertaining of truth—truth and truth alone being the object to be attained. If such a principle were admitted, it would follow that the stronger and clearer the case against the accused, the more reticent must be the judge, the more deficient in his duty in placing the case before the jury in the clearest and plainest light. We must remember that while it is the business of judicial action to protect the innocent, so, on the other hand, it is the duty of the judge to take care that the guilty does not escape. Not only in the conviction of the innocent, but also in the escape of the guilty, lies, as the old saying well expresses it, the condemnation of the judge ; which applies as well to the jurymen who is the judge of the fact, as to the judge who presides at the trial, and whose business it is to bring the whole case before the jury. We must take care that the innocent does not suffer, but we must also take care that if guilt is brought home to the accused, it shall carry with it the consequences of your verdict. Gentlemen, I have taken counsel with my learned brethren, I may say, upon every point of this case. We have questioned our own minds as to whether a solution was to be found of any of the things that press with



weight upon the defendant ; if we could find none, it has not been the fault of our desire to do honest and impartial justice.

Gentlemen, you have been asked to give the defendant the benefit of any doubts you may entertain. Most assuredly it is your duty to do so. It is the business of the prosecution to bring home guilt to the accused, to the satisfaction of the minds of the jury, but the doubt to the benefit of which the accused is entitled must be such as rational, thinking, sensible men may fairly and reasonably entertain ; not the doubts of a vacillating mind that has not the moral courage to decide, but shelters itself in a vain and idle scepticism. They must be doubts which men may honestly and conscientiously entertain. Gentlemen, you have been addressed in language the like of which has never before been heard within these walls. You have been told—you have been exhorted—that if there should be one among you who should entertain a different opinion from the rest of his fellow-jurymen, he should adhere—pertinaciously adhere—to the doubt which he may entertain, instead of seeking to reconcile his opinion with the opinion of the rest of your body. I never yet heard language of this kind addressed to a jury ; and therefore I am obliged to express my judicial sense of such an argument. Not that I believe there is the slightest necessity for warning you against a doctrine which might lead to the most mischievous results if it were generally entertained ; but as that doctrine has been propounded, I must make the observations upon it which appear to me to be necessary to protect the administration of justice from being led astray by a false and mischievous principle. I should be the last man to suggest to any individual member of a jury that if he entertains a conscientious, unalterable conviction, although he may stand alone against his eleven fellow-jurors, he should give up that profound and unalterable conviction of his own mind. The law requires the unanimous verdict of twelve men before the verdict of guilty or not guilty can be finally pronounced ; and if a man is satisfied and convinced, after having given the case the best attention that he can give to it, that he cannot find the verdict which the rest of his fellow-jurors are desirous of pronouncing, he does right to stand by his conviction. But then we must recollect that he has a duty to perform in this, that he is bound to give the case every possible consideration before he finally determines upon the course which he himself will pursue ; and if a man finds himself differing from the rest of his fellows with whom he is associated in the great and solemn functions of justice as a juror, he should start with the fair presumption that he, the one individual, is more likely to be wrong than are the eleven men from whom he differs. He should bear in mind that the great purpose of a trial by jury is to obtain unanimity and put an

end to further litigation. He should address himself in all humility and all diffidence in his own judgment to the task he has to perform, and carefully consider all the reasons and all the arguments which the rest of the body may be able to advance as the ground of the judgment which they are prepared to pronounce. He should let no self-conceit, no notion of being wiser or more clever, or higher in point of intelligence and judgment than the rest, no vain-glorious assumption of superiority on his part, stand in the way of the most careful consideration of the grounds upon which the rest of the body may found their views. All I am impressing upon you—and what I am saying to you applies to trial by jury in general—is that a man who is alone against his fellows, or the one or two who may be alone against their fellows, are bound to do their best carefully to satisfy their minds that the good sense and sound judgment is not with the majority instead of with the one or with the few. That, I think, is a duty which a jurymen owes to the administration of justice, and the respect which he owes to the opinion of his fellows; and I must protest against any attempt to exhort or encourage a single jurymen, or one or two, out of the body of twelve, to stand out resolutely, obstinately, and with a fixed determination and purpose, against the judgment and opinion of the large majority of their fellows. I must add that if such suggestions as those made by the learned counsel were to be adopted and acted on, and these great trials were rendered abortive by a verdict not being pronounced, and that the re-commencement of long-protracted litigation should thereby be necessarily occasioned, it would make trial by jury not the blessing it is, the great, noble institution it is, but a baneful curse in the administration of justice, and must lead, by legislation, to a modification of our existing course of procedure—a modification which I for one do not desire to see introduced. And I trust that you will be able, whichever way your decision shall be, to pronounce a unanimous verdict, and so to put an end to this litigation, so that there shall not be created in the public mind the intense dissatisfaction which would arise from seeing a protracted inquiry like the present rendered abortive by the dissentient opinions of one or two of the jury—an example which, if followed, might introduce a change into our system, which would then, I think, be loudly called for, but which would be a change that I for one should deprecate and deplore, although if its necessity were rendered absolutely undoubted, of course it would be a change which everyone must acquiesce in.

So much, gentlemen, for this topic. I have also heard language addressed to you such as I never heard before, and hope and trust I shall never hear again. You have been invited to pronounce your verdict not simply with reference to your own conscientious conviction, but with a view to promised “ovations” at the hands of your

countrymen. I am sure there is not one of you who, however much you may desire that public opinion should go along with you, and ratify your verdict, however much you may desire that that which you do should find favour in the sight of your fellow-countrymen, would not consider it an insult to be asked to sacrifice his own sense of duty and of right for the sake of popular applause, or of idle gratification from what is called the " ovations " of your countrymen. Gentlemen, not only has this novel device been resorted to of attempting to win over jurymen by the hope of popular applause, but a system of intimidation, a thing equally unheard of in courts of justice, has been attempted to be brought to bear upon us who are sitting here to administer justice. If our views should be adverse to the defendant, we are threatened with the reprobation of our countrymen ; and we have been told that if our countrymen do not visit us with sufficient reprobation, a history of this case shall be written, in which those who do not take part with the defendant, or who think it necessary, in the honest discharge of their duty, to point out things that may make against him, or to restrain the license of unqualified abuse on the part of his counsel, are to be handed down covered with infamy to the execration of posterity. I have heard language applied to this tribunal which I will undertake to say in the whole course of the annals of the administration of justice in this country no advocate ever yet thought of addressing to a court. When I say I heard it, I must correct the phrase: I did not hear it ; for it was spoken with bated breath ; I must suppose with the purpose and intention that I should not hear it ; for had I heard it most unquestionably it should not have passed without that punishment which it is competent to the court to inflict, and which should be inflicted upon any one who outrages decency by offering to it indignity and insult. The learned counsel spoke just loud enough for the reporter to catch his words, but not for us ; yet one or two words caught me, as I listened, which made me think that some contumely and insult was intended to be conveyed ; and I called upon the learned counsel to speak out, as a man should speak, when he intends to attack others, and his answer was that indisposition brought on by overwork and exertion prevented him from speaking in the loud tone which he can otherwise so well command ; and yet two minutes afterwards, when he had changed his subject, he was speaking loud enough to be heard at the other end of Westminster Hall. That is the way—combining cowardice with insult—in which the learned counsel thought proper to insult this court. Observe the language. I rejoice to see that the bar of England are here present in numbers, let them hear the way in which one of their body addresses this Court of Queen's Bench—I venture to say this august Court of Queen's Bench. There is plenty of opportunity to correct any



errors into which the court may have fallen, or anything that may amount in the slightest degree to judicial misconduct; but the court is not to be bearded and insulted in this flagrant manner. The bar shall hear the language which, outraging all decency, one of their own body addressed, not to the court, but to the reporters, in order that it might get into the newspapers without bringing on him the visitation with which otherwise most assuredly he would have been visited at the moment. I have had the shorthand notes of what fell from the learned counsel handed to me, and I find that this was his language: "There is no actor in this trial, from the humblest up to the most exalted, who may not well look with apprehension and almost with dismay at the position that he may occupy before his countrymen and the world for all future ages. I should be sorry to think that there is any person connected with this great controversy who does not look with a species of pride in maintaining an honest fame before the world and posterity"—you see some of us are not to maintain an honest fame—"I should be sorry to think that there was one of us who was dead to the future that did not sometimes ask himself, with the utmost feeling of solemnity, how shall I also appear in the historical reminiscences of this great trial? For my own part, from the first moment when I became connected with it, I knew that it was one which must cover the names of all prominently engaged in it in future days either with infamy or with honour, and I on a former occasion took the liberty of calling your attention to the blazon of glory which still surrounds the names"—that was an invitation to you—"of all those noble jurymen who were connected in a former age with the great Annesley trial, and I am anxious that a similar illumination of splendour should surround not your names only, but the names of others also, in the eyes of those persons who will read this trial during all ages, because never was there a trial in England, I believe, since that memorable trial of Charles the First, which has excited more attention and observation of Englishmen and of the world than this. Many things have passed in the course of this trial which I would give a portion of my heart's blood had not passed. Many things have occurred in the course of this investigation which in my judgment will for ever blur and sully the names of certain individuals—individuals with whose name and glory many of us were concerned; individuals whose names and glory was part—— The LORD CHIEF JUSTICE: Will you speak a little louder?" Then we have the answer, "I will speak as loud as I can, but I am suffering from indisposition."

Gentlemen, it would be idle affectation to pretend for a single moment not to know at whom those observations, connected with the alternative of infamy and honour, were addressed, and whose name is to be "blurred and sullied" for the future. Is that the way in

which counsel is to speak of the judges of the tribunal before whom he is pleading? I am quite sure that there can come but one response from the body that I see before me. (The bar rose in assent.)

Gentlemen, the history of this case may be written by whom it may—I care not. I am conscious of having done my duty in it, and I can only say :

“ There is no terror in these threats,  
For I am armed so strong in honesty,  
That they pass by me like the idle wind,  
Which I regard not.”

The history of this case may be written hereafter, and, for aught I know, with a pen steeped in gall and venom; that may not scruple to libel or lampoon the living, or to revile and calumniate the dead. I have no fears: the facts will speak for themselves. I have sat on this bench for many years. I cannot hope that my memory, like that of the great and illustrious men who have gone before me, will live in after ages, but I do hope it will live in the remembrance—nay, I venture to say the affectionate remembrance—of the generation before whom, and with whom, I have administered justice here. And if my name shall be traduced, if my conduct shall be reviled, if my integrity shall be questioned, I leave the protection of my judicial memory to the bar of England, my relations with whom have never until this trial been in the slightest degree unpleasantly disturbed, and whose support I may say has been the happiest part of my judicial life.

Gentlemen, motives of favour and fear having been attempted to be brought to bear upon us, allow me to say that there is but one course to follow in the discharge of great public duties. A high and solemn sense of duty should be our only guide; a desire to do that duty honestly our first and ruling motive, before which all other considerations should give way. No man should be insensible to public opinion in discharging a public trust. No man should be insensible to the good opinion—aye, if you like, the applause of his countrymen. But there is a consideration far higher than that—the satisfaction of your own internal sense of duty, the satisfaction of your own consciences, in the consciousness that you are following the promptings of that still, small voice which never, if we listen honestly to its dictates, misleads or deceives us; that voice, whose approval upholds us, even though men should condemn us, and whose approval is far more precious than the honour and applause we may derive, no matter from what source—that voice whose approval makes our walk serene by day and our pillow smooth by night. Listen to that, and follow it, and do right, and care not for anything that may be thought, or said, or done, without these walls. In this the sacred temple of justice such considerations as those by which it has been attempted

to sway your minds ought to have, and can have, no place. You and I have only one thing to consider—it is the duty we have to discharge, and which we are bound to discharge, before God and man, with only one thought and one desire, which is, to do it honestly, truly, and fearlessly, without regard to any consequences except the desire that that duty shall be properly done.

Gentlemen, I have discharged my duty to the best of my ability. It only remains that you shall do yours; and I am sure that the verdict you will pronounce will be received on all hands, except by fanatics and fools, as the judgment of twelve men who have brought to the consideration of this great cause the utmost and the most vigilant attention, the most marked intelligence, and the most earnest desire to discharge their high and solemn duty, according to what they believe in their hearts and souls to be the truth and justice of the case.





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## APPENDIX.

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EARLY LETTERS OF  
ROGER CHARLES TICHBORNE.

ROGER C. TICHBORNE.

DEFENDANT.

*Adams*

MADAM T. JULY 10, 1949.

*Adams*

MADAM T. NO. 75.

*No B. Adams.*

*Adams*

H. G. SEYMOUR, JULY 19, 1852.

*Adams*

LADY DOUGHTY, FEB. 25, 1854.

*Adams*

LADY T. JUNE 19, 1851.

*Adams*

GOSFORD, FEB. 1, 1851.

*Adams*

LADY D. FEB. 25, 1854.

*Adams*

H. D. SEYMOUR, JULY 19, 1852.

*Adams*

H. D. SEYMOUR, JULY 19, 1852.

*Adams*

LADY T. OCT. 5, 1852.

*Adams*

*Adams*

LADY T. JULY 24, 1866.

*Adams*

LADY T. JULY 24, 1866.

*Adams*

GOSFORD NO DATE.

*Adams*

LADY RADCLIFFE, FEB. 3, 1867.

*Adams*

CURITT, JAN. 26, 1866.

*Adams*

LADY T. JAN. 17, 1866.

*Adams*

LADY T. JAN. 17, 1866.

*Adams*

MRS. GREENWOOD, FEB. 3, 1867.

CHARLES TICHBORNE.

<i>Dear</i> LADY T. JULY 24, 1866.	<i>Dear</i> LADY T. JULY 24, 1866.
<i>Doughty</i> N <sup>o</sup> 58.	<i>Doughty</i> N <sup>o</sup> 59.
<i>Dear</i> CIBBS JAN <sup>y</sup> 17, 1867.	<i>Dear</i> LADY T. JAN <sup>y</sup> 17, 1867.
<i>England</i> LADY T. MAY 24, 1866.	<i>England</i> LADY T. MAY 24, 1866.
<i>Edwards</i> LADY T. JULY 24, 1866.	<i>Edwards</i> LADY T. JULY 24, 1866.
<i>Estlin</i> N <sup>o</sup> 61.	<i>Estlin</i> N <sup>o</sup> 61.
<i>Father</i> LADY T. JULY 24, 1866.	<i>Father</i> LADY T. JULY 24, 1866.
<i>Francis</i> LADY T. JULY 24, 1866.	<i>Francis</i> LADY T. JULY 24, 1866.
<i>God</i> LADY T. MAY 24, 1866.	<i>God</i> LADY T. MAY 24, 1866.
<i>Dorset</i> COSEFORD, NOV <sup>r</sup> 22, 1852.	<i>Dorset</i> COSEFORD, NOV <sup>r</sup> 22, 1852.
<i>Doughty</i> W. D. SEYMOUR, DECE <sup>r</sup> 13, 1850.	<i>Doughty</i> W. D. SEYMOUR, DECE <sup>r</sup> 13, 1850.
<i>Dear</i> LADY T. JUNE 19, 1851.	<i>Dear</i> LADY T. JUNE 19, 1851.
<i>Cyprian</i> LADY T. JAN <sup>y</sup> 5, 1853.	<i>Cyprian</i> LADY T. JAN <sup>y</sup> 5, 1853.
<i>English</i> LADY T. JAN <sup>y</sup> 4, 1852.	<i>English</i> LADY T. JAN <sup>y</sup> 4, 1852.
<i>Europe</i> N <sup>o</sup> 18.	<i>Europe</i> N <sup>o</sup> 18.
<i>Estlin</i> N <sup>o</sup> 61.	<i>Estlin</i> N <sup>o</sup> 61.
<i>Father</i> LADY T. JAN <sup>y</sup> 5, 1853.	<i>Father</i> LADY T. JAN <sup>y</sup> 5, 1853.
<i>Francis</i> LADY DOUGHTY, FEB <sup>r</sup> 28, 1854.	<i>Francis</i> LADY DOUGHTY, FEB <sup>r</sup> 28, 1854.
<i>God</i> LADY RADCLIFFE, FEB <sup>r</sup> 4, 1852.	<i>God</i> LADY RADCLIFFE, FEB <sup>r</sup> 4, 1852.
<i>Dear</i> JULY 10, 1846, NO. 80.	<i>Dear</i> JULY 10, 1846, NO. 80.
<i>Dear</i> NO. 79.	<i>Dear</i> NO. 79.
<i>Dear</i> JULY 10, 1846, NO. 80.	<i>Dear</i> JULY 10, 1846, NO. 80.
<i>Dear</i> NO. 84.	<i>Dear</i> NO. 84.
<i>Dear</i> NO. 80.	<i>Dear</i> NO. 80.
<i>Dear</i> NO. 80.	<i>Dear</i> NO. 80.







DEFENDANT.

ROGER C. TICHBORNE.

ROGER CHARLES TICHBORNE.

*Girdle*

LADY T. JULY 24, 1866

*Gustard*

NO 81

*He*

LADY T. JULY 28, 1866

*Hoping*

LADY T. MAY 24, 1866

*Hopkins*

NO 65.

*g g p p*

NO 45

MRS GREENWOOD, 3, FEBY 1867.

*g g g p g*

NO 43

NO 45.

LADY T. JULY 24, 1866.

*H*

NOUS, JAN 2, 1867.

*Gosford*

LADY DOUGHTY, FEBY 28, 1864

*Gosford*

GOSFORD, JAN 23, 1861.

*Gosford*

LADY T. JUNE 11, 1851

*Gosford*

JUNE 22, 1858

*Hopkins*

NO 72.

*g g p p*

NO 8. LADY T. JUNE 19, 1851

*g g p p*

NO 22.

NO 9.

GOSFORD, DECEMBER 1861.

*Gosford*

LADY T. OCTOBER 2, 1861.

*These letters  
do not occur.*



LADY T. MAY 24, 1866.

Kate

MRS GREENWOOD, FEBY 3, 1867.

Lundon

M. D. SEYMOUR, FEBY 10, 1867.

Letter

LADY T. JAN 17, 1868.

Mother

LADY T. JAN 17, 1868.

Mary

LADY T. JAN 17, 1868.

Maria

LADY T. JULY 24, 1868

Han

LADY T. JAN 17, 1868.

Hannah

CUBITT, JAN 26, 1868.

John

LADY T. JULY 24, 1866.

LADY T. JUNE 19, 1861.

Kathy

MISS DOUGHTY, FEBY 5, 1862.

Lundon

LADY T. JAN 6, 1863.

Lucas

GOSFORD, NOV 22, 1863

Mother

LADY T. JUNE 19, 1861

Mary

LADY T. JUNE 19, 1861.

Maria

LADY DOUGHTY, FEBY 26, 1864

Mumford

GOSFORD, NOV 14, 1862

Mary

LADY DOUGHTY, FEBY 26, 1864.

Mary

LADY DOUGHTY, FEBY 26, 1864.

NO. 72.

NO. 80. NO. 79

Lundon

NO. 81.

Mariae Hannah

NO. 70

Maria

NO. 81.

Mariae Hannah

NO. 82.

Maria

NO. 78.

Maria

NO. 83.







DEFENDANT

*Parish*  
NO 42.

*Paris*

MONT. JAN 6, 1857

*Paris*

LADY T. MAY 24, 1856.

*H C A*

MONT. JAN 6, 1857

*Paris*

MONT. JAN 4, 1857.

*So*

CUBITT, JAN 29, 1855.

*Sydney*

LADY T. JUNE 29, 1855.

*Turner*

LADY T. JULY 24, 1855.

*To*

ROGER C. TICHBORNE.

*Parish*

M. D. SEYMOUR, JULY 19, 1852

*Paris*

LADY T. JAN 4, 1852.

*Paris*

NO 10.

*R. G. L.*

LADY T. OCT 4 5, 1852.

*Regiment*

HENRY D. SEYMOUR, DEC 12, 1850.

*See*

GOSFORD NOV. 23, 1852.

*Gentle*

LADY DOUGHTY, FEB 28, 1854.

*Thyng*

LADY T. JAN 1853.

*Curry*

ROGER CHARLES TICHBORNE.

*Parish*

L'ABBE SALIS, NO. 88.

*Paris*

MADAME T. NO. 88.

*Paris*

MADAME T. NO. 88.

*Paris*

MADAME T. JULY 10, 1846, NO. 80.

*Paris*

MADAME T. SEPTEMBER 10, 1845, NO. 82.

*Paris*

MADAME T. SEPTEMBER 10, 1843, NO. 82.

*Paris*

MADAME T. JULY 10, 1846, NO. 80.

*Paris*

L'ABBE SALIS, NO. 88.

*Paris*

TAB

LADY T. JULY 24, 1866.

*Brook*

LADY T. JULY 24, 1866.

*Myrtles*

LADY T. MAY, 27, 1867.

*Volpurniana*

NO. 67.

*Victoria*

LADY T. JAN. 17, 1866

*Via*

CUBITT, JAN. 26, 1865.

*Wrayga Wrayga*

CUBITT, JAN. 26, 1865.

*Wren*

LADY T. JAN. 17, 1866.

*William*

Mrs. GREENWOOD, FEB. 3, 1867.

WILL. 16, JUNE, 1852.

*Wendy*

H. D. SEYMOUR, JULY 19, 1852

*Wendy*

COSFORD, NOV. 14, 1852

*Wendy*

DEC. 20, 1858.

*Wendy*

JUNE 22, 1862

*Wendy*

H. D. SEYMOUR, JULY 13, 1852

*Wendy*

LADY DOUGHTY, FEB. 28, 1859

*Wendy*

LADY DOUGHTY, FEB. 28, 1859

NO. 84.

*Wendy*

MADAM T. JUNE 15, 1849, NO. 88.

*Wendy*

MADAM T. SEPTEMBER 10, 1849, NO. 82.

(3)







EARLY LETTERS OF  
ROGER CHARLES TICHBORNE.

ROGER CHARLES TICHBORNE.

DEFENDANT.

*Yours*

LUBITT, JAN 25 1865

*Yours*

LADY F. JUNE 25 1865

*Yours*

GOSFORD, DECEMBER 23, 1861.

*Yours*

LADY T. JAN. 6, 1863.

*Does not  
occur.*

*Yours Truly*

NO 90.

SIGNATURES.

DEFENDANT.

*R. C. Tichborne*

ROGER CHARLES TICHBORNE.

*R. C. Tichborne*

MRS. GREENWOOD, FEBRUARY 8, 1867

GOSFORD DECEMBER 28, 1861.

LADY T., SYDNEY, JUNE 28.

H. C. Fickhorne

ROUS, JANUARY 1, 1887.

H. C. Fickhorne Esq

ROUS, No. 87

H. C. Fickhorne

No 38

Wm. Charles Fickhorne

FROM MARRIAGE CERTIFICATE.

THE PROMISE, JUNE 22, 1882.

H. C. Fickhorne

LADY DOUGHTY, FEBRUARY 28, 1884.

H. C. Fickhorne

MISS DOUGHTY, FEBRUARY 8, 1882.

H. C. Fickhorne

LADY DOUGHTY, FEBRUARY 28, 1884.







DEFENDANT.

*Mrs. Rous*

ROUS, JANUARY 4, 1867.

*But*

ROUS, JANUARY 4, 1867.

*But*

CUBITT, JANUARY 25, 1865.

*Baymont*

*Charles*  
No. 41  
MARRIAGE CERTIFICATE.  
*Concord*

NO. 38

*Cash*

NO. 72.

*Country*

LADY T. JANUARY 17, 1866.

*Cut*

ARTHUR ORTON.

*Anchor*

MARY ANN LOADER, DEC<sup>r</sup> 12, 1852.

*But Boat But*

MRS JURY, JUNE 28

JUNE 28

MARY ANN LOADER, DEC<sup>r</sup> 28, 1852.

*Bone Bible Blood*

THE VOW

*Brother*

MARCH 31.

*Care*

SISTER, MARCH 31.

*Clark*

MARY ANN LOADER. CHRISTMAS DAY.

TABLE  
DEFENDANT AND



*Dear*

*Dear*

NO. 84.

*Dearest*

LADY T. JANUARY 17, 1866.

*Dear*

H. D. SEYMOUR, FEBY 10, 1867.

*England*

CUBITT, JANY 26, 1865.

*Friends*

NO. 77.

*Friend*

JANUARY 17, 1866.

*Gibbs*

CUBITT, JANY 26, 1866.

*Gaud*

LADY T. JULY 24, 1866.

*Dear*

MRS. JURY, JUNE 29

*Dear*

SISTER FROM HOBART TOWN, MARCH 31.

*Dear*

TO JURYS JUNE 28.

*Eighteen*

JURYS, JUNE 28.

*Ever*

MARY ANN LOADER, CHRISTMAS EVE

*Friend*

MARY ANN LOADER, SEPT<sup>r</sup> 12, 1852.

*Frank*

MARY ANN LOADER SEPT<sup>r</sup> 18, 1853.

*Glad*

MARY ANN LOADER, SEPT<sup>r</sup> 18, 1853.

*Glad*

MARY ANN LOADER, JANY 16 1853

(5)

HUR ORTON







DEFENDANT.

*Has*

LADY T. JUNE 23, 1866.

*Higgins*

NO. 71.

*✓*

NO. 41.

*✓*

ROUS, JANUARY 4, 1857.

*✓ ✓ ✓*

TO CUBITT, JANUARY 26, 1866. NO. 32. NO. 34.

*✓ ✓*

LADY T. JULY 28, 1866.  
AND ROUS, JUNE 4, 1867

*g g ✓*

NO. 63.

*✓*

NO. 32.

*Kate*

ARTHUR ORTON.

*Hobart*

MARY ANN LOADER, JAN. 16, 1853.

*Hobart*

TO SISTER OCTOBER 29, 1862.

*✓*

MARY ANN LOADER, JANUARY 19, 1853

*✓*

MARY ANN LOADER, DECEMBER 28, 1852.

*✓*

MARY ANN LOADER, NEW YEAR'S EVE.

*✓*

MARY ANN LOADER, CHRISTMAS DAY.

*✓*

NO. 28.

*✓ Jury*

TO THE JURYS, JUNE 28.

*Miss*

Lady

LADY T. NO. 84.

Laurance

NO. 45.

Lady Love

NO. 42.

NO. 46.

Letters

LADY T. JULY 24, 1866.

Letters

LADY T. JANUARY 17, 1867.

Memo

LADY T. MAY 24, 1866.

Mamma's Mail

LADY T. JULY 24, 1866.

LADY T. MAY 24, 1866.

Memo

TO MRS. COTTIE SYDNEY, JULY 6.

L. ondon

MARY ANN LOADER, NO. 28.

Loader

MARY ANN LOADER, NO. 28.

June

MARY ANN LOADER, DECEMBER 28, 1862.

Letter

MRS. JURY, MARCH 31

Letters

FROM HOBART TOWN.

My

NO. 25.

Miss Horn

TO JURY, JUNE 23.

MRS. JURY, MARCH 31.

Mellor

TO MARY ANN LOADER, NO. 27







DEFENDANT.

*Or*

NO. 82.

*Juris*

ROUS. JANUARY 4, 1867.

*25 pmtly*

NO. 73.

*Papers*

ROUS. JANUARY 4, 1867.

*Planner*

NO. 71.

*post Office*

NO. 82.

*Remain*

ROUS. JAN. 4, 1867.

*Remain*

*Remain*

GIBBS, JAN. 17, 1867.

ARTHUR ORTON.

*Orton*

MARY ANN LOADER, DEC. 12, 1852.

*part*

MARY ANN LOADER, JAN. 16, 1853

*plays*

TO SISTER, MARCH 31.

*Present*

THE JURYS, JUNE 28.

*potatoes*

TO JURYS, JUNE 28.

*plenty*

NO. 29

*Remain*

MARY ANN LOADER SEPTEMBER 16, 1863.

GIBBS, JANUARY 17, NO. 76.

*Sarah*

LADY T. JULY 24, 1866.

*Sister*

MRS. TREDGETT, JUNE 9, 1866.

*Sis*

LADY T. JULY 26, 1866.

*Mother*

LADY T. FEBRUARY 17, 1866.

*Mary*

AFFIDAVIT NO. 92.

*Wagga*

LADY T. MAY 24, 1866.

*William*

TO ROUS SEPTEMBER 3, 1867.

*Wife*

DEFENDANT'S DRAFT AFFIDAVIT. NO. 92

MARY ANN LOADER JANUARY 16, 1853.

*Muscell*

MARY ANN LOADER SEPTEMBER 19, 1853.

*Sister*

TO SISTER, MARCH 31.

*Sunray*

MARY ANN LOADER, JANUARY 16, 1853.

*Steele*

MARY ANN LOADER, JANUARY 16, 1853.

*What*

TO JURYS, JUNE 28.

*Yorker*

MARY ANN LOADER, DECEMBER 28, 1852.

*W. L. L. L.*

NO. 28.

*W.*

MARY ANN LOADER DECEMBER 28, 1852.

*W. L. L.*

MARY ANN LOADER, CHRISTMAS DAY







DEFENDANT.

*Which*

NO. 89.

*Yours*

LADY T. JULY 24, 1866.

*Yours*

TO CUBITT, JANUARY 26, 1865.

*Yours*

CUBITT, JANUARY 26, 1866.

DEFENDANT.

*Elizabeth*

LADY T. JUNE 24, 1867.

*Elizabeth*

LADY T. JUNE 24, 1867.

ARTHUR ORTON.

*Which*

TO JURY'S, JUNE 26.

*Yours*

MARY ANN LOADER JANUARY 16, 1863.

*Yours*

MARY ANN LOADER, NEW YEAR'S EVE.

*Yours*

MARY ANN LOADER, DECEMBER 12, 1862.

ARTHUR ORTON.

*Elizabeth* *Dorcas*

TO SISTER, MARCH 31, NO. 299.

*Elizabeth* *Lizzy*

TO SISTER, MARCH 31. SISTER, MARCH 31.



*Many years*

LETTER TO MRS. JURY.

*I hear the Daughty  
and Tichborne crest.*

MRS. GREENWOOD, FEBRUARY 8, 1827.

*a fine day*

CUBITT, JANUARY 26, 1866.

*anything*

CUBITT, JANUARY 26, 1866.

*everything*

GIBBS, JANUARY 17, 1867.

*weather you have*

CUBITT, JANUARY 26, 1866.

*I have being has a picture*

NO. 65.

*children*

NO. 76.

*received*

TO COTTIE, SYDNEY, JULY 24

*I bear a cross.*

VOW, MARCH 11, 1859.

*fine*

MARY ANN LOADER, CHRISTMAS DAY.

*anything*

MARY ANN LOADER, JANUARY 16, 1875

*nothing.*

THE JURYS, JUNE 28.

*weather you have*

TO SISTER, MARCH 31.

*I have being here*

TO MARY ANN LOADER, NOV. 27.

*M. L. Loader*

THE JURYS, JUNE 28

*received*

MARY ANN LOADER, JANUARY 18, 1868







ROGER CHARLES TICHBORNE.

*My*

LADY T. JANUARY 4, 1892.

*My darling*

LADY T. JUNE 19, 1891.

*My darling*

LADY T. JUNE 19, 1891.

*My darling*

LADY T. JUNE 19, 1891.

*My darling*

GOSFORD, DECEMBER 23, 1891.

*My darling*

LADY T. JUNE 19, 1891.

*My darling*

No 16.

*My darling*

MISS DOUGHTY, FEBRUARY 5, 1892.

DEFENDANT.

*And*

ROUS, JANUARY 4, 1897.

*My darling*

No. 58.

*Best*

No. 58.

*Best*

ROUS, JANUARY 1897.

*Blessed*

LADY T. JULY 24, 1898.

*Carman*

No. 58.

*Communicated*

CUBITT, JANUARY 26, 1896.

*Charles*

LADY T. MAY 24, 1896.

ARTHUR ORTON.

*Fun*

MARY ANN LOADER, DECEMBER 12, 1892.

*Affectionate*

MARY ANN LOADER, SEPTEMBER 18, 1893.

*Best*

MRS. JURY, JUNE 28.

*Bone Broken*

THE VOW, MARCH 11, 1895.

*Brothers*

MARY ANN LOADER, SEPTEMBER 18, 1893.

*Clock*

MARY ANN LOADER, CHRISTMAS DAY.

*Cure*

TO SISTER, MARCH 31.

NDANT AND ARTHUR ORTON.

MARY ANN LOADER, JANUARY 19, 1893.

*Donald*

THE VOW, MARCH 11, 1893.

*England*

TO SISTER, MARCH 31.

*Emily*

TO SISTER, MARCH 31.

*Fire*

MARY ANN LOADER NEW YEAR'S EVE

*Father*

TO SISTER, MARCH 31.

*Family*

MARY ANN LOADER, SEPTEMBER 19, 1893.

*Friend*

TO MRS. JUNE 20.

*Love*

MARY ANN LOADER, JANUARY 19, 1893.

NO. 73.

*Dear*

LADY T. JUNE 28, 1896.

*England.*

M. D. BEYMOUR FEBRUARY 10, 1897.

*Estates*

CUBITT, JANUARY 26, 1896.

*Edward*

LADY T. JULY 24, 1896.

*Father*

LADY T., SYDNEY, JULY 24, 1896.

*Fish Fish*

NO. 98.

*Fish*

M. D. BEYMOUR, FEBRUARY 10, 1897.

*God.*

LADY T. MAY 24, 1896.

LADY T. JUNE 19, 1891.

*Dorset*

DORSET, NOVEMBER 22, 1892.

*England.*

LADY T. JANUARY 4, 1896.

*English*

LADY T. JANUARY, 1892

*Fire*

KATE DOUGHTY FEBRUARY 4, 1892

*Arthur Arthur*

NO. 8.

NO. 21

*Arthur Arthur*

KATE DOUGHTY FEBRUARY 5, 1892.

*Arthur Arthur*

FEBRUARY 4, 1892, NO. 87.

*God*

ROUS, JUNE 25, 1892.







ROGER CHARLES TICHBORNE.

*Gordon*

GOSFORD, DECEMBER 28, 1881.

*Grove*

H. D. SEYMOUR, DECEMBER 19, 1880.

*Henry*

H. D. SEYMOUR JULY 19 1882.

*Heur*

LADY T. JUNE 19. 1881.

*Hester*

LADY T. JANUARY 6. 1883.

*|| || ||*

GOSFORD, DECEMBER 28, 1881

NO. 8.

1188 DOUGHTY, FEBRUARY 5, 1882.

*|| || ||*

DEFENDANT.

*Goad.*

LADY T. JULY 24 1880.

*Gibbs*

GUBITT, JANUARY 26, 1886.

*Gr*

LADY T. MAY 24, 1886.

*Has*

ROUS, JANUARY 4, 1887

*Hole*

NO. 53.

*g g g g*

NO. 48.

NO. 44.

NO. 53.

*g g g g*

ARTHUR ORTON.

*Gird*

MARY ANN LOADER, CHRISTMAS DAY.

*glad*

MARY ANN LOADER, SEPTEMBER 19, 1883.

*Henry*

MARY ANN LOADER, SEPTEMBER 19, 1883.

*Hose*

TO JURY8. JUNE 28.

*Robert*

MARY ANN LOADER, DECEMBER 12. 1882.

*.g g*

MARY ANN LOADER, DECEMBER 28, 1882.

NO. 28.

*g g*

TA

*Mary Ann Loader*

MARY ANN LOADER NEW YEAR'S EVE. NO. 28.  
TO JURYS, MAY 28.  
VOW, MARCH 11, 1868.

*January*

NO. 26.

*Jury*

NO. 29.

*June*

TO JURYS, JUNE 28.

*Miss*

NO. 27.

*Miss*

HOBBART TOWN, JUNE 28.

*Mary Ann Loader*

MARY ANN LOADER, CHRISTMAS DAY

*Lady T.*

LADY T. NO. 38.

*Jan*

NO. 54.

*July*

NO. 55.

GIBBS, JULY 4, 1867.

NO. 56.

*June*

NO. 78.

*Kate*

MRS. GREENWOOD, FEBRUARY 3, 1867.

*Lady*

LADY T. MAY 14, 1868.

NO. 57.

*Landon*

GIBBS, JANUARY 17, 1867.

*January*

NO. 6.

NO. 91.

*January*

LADY T. JANUARY 6, 1868.

*July*

M. D. SEYMOUR, JULY 19, 1862.

*June*

LADY T. JUNE 19, 1861.

*Mary Ann Loader*

NO. 12.

NO. 87.

*July*

LADY DOUGHTY, FEBRUARY 26, 1864 BUENOS AYRES.

*Wendell*

MISS DOUGHTY, FEBRUARY 4, 1862.







ROGER CHARLES TICHBORNE.

*Grandson*

No. 63.

*Grandson*

GOSFORD, NOVEMBER 22, 1862

*My Dear Mother*

No. 20.

*My Dear Mother*

No. 8.

*Remembrance*

No. 91.

*Remembrance*

No. 91.

*Remembrance*

LADY DOUGHTY, FEBRUARY 28, 1864.

*Remembrance*

MRS DOUGHTY, FEBRUARY 4, 1862.

DEFENDANT.

*Lady*

No. 42.

*Lady*

No. 48.

*Little*

LADY T. MAY 27, 1867.

*My Dear Mother*

No. 35.

*My Dear Mother*

No. 81.

*Mother*

No. 42.

*Mother*

No. 32.

*Mother*

LADY T. JANUARY 17, 1866.

*Mother*

No. 42.

*Mother*

No. 82.

ARTHUR ORTON.

*Orton*

No. 25.

*Little*

TO SISTER, MARCH 91.

*My Dear Friend*

No. 29.

*Mrs Donah*

No. 30

*Very*

MARY ANN LOADER NEW YEAR'S EVE.

*No*

MARY ANN LOADER, JANUARY 10, 1869.

*Orton*

VOW, MARCH 11, 1869.



*Lewis Lewis*  
 GOSFORD, NOVEMBER 28, 1852.  
 No. 19.  
*Dear Aunt*  
 GOSFORD, DECEMBER 28, 1851.  
 No. 12.  
*My Aunt*

GOSFORD, NOVEMBER 28, 1852.  
 No. 12.

*My*  
 WILL, JUNE 16, 1852.  
*Dear*  
 No. 209.

GOSFORD, DECEMBER 8, 1854.

*Prof. Norton*  
 LADY T. MAY 24, 1866.  
 No. 68.  
*place*  
 LADY T. JANUARY 17, 1866.  
*with garden*

LADY T. JULY 24, 1866.  
 No. 38

*Hughes*  
 No. 39.  
*Memorandum*  
 GIBBES, JANUARY 17, 1867.  
*Have fine*

GIBBES, JANUARY 17, 1867.

*Sir*

CUBITT, JANUARY 26, 1865.

*present*  
 MARY ANN LOADER, DECEMBER 28, 1852.  
*place of work*  
 MARY ANN LOADER, SEPTEMBER 18, 1853.  
 VOW, MARCH 11, 1855.  
*plenty*

MARY ANN LOADER, CHRISTMAS DAY

*November 27*

MARY ANN LOADER SEPTEMBER 18, 1853

*Russells*

MARY ANN LOADER NEW YEAR'S EVE.

*January*

No. 26.







ROGER CHARLES TICHBORNE.

*Mrs. Gurn*

NO. 6.

*Yuleis*

LADY T. JUNE 19, 1851.

*Other*

NO. 10.

*Thompson*

NO. 67.

*Murich*

M. D. SEYMOUR, JULY 19 1862.

*Winton*

M. D. SEYMOUR, DECEMBER 17, 1860.

*Wiggins*

PROMISE, JUNE 22, 1862.

DEFENDANT

*Saml. Jurn*

LADY T. MAY 24, 1866.

NO. 84.

*Sydney Sairl*

LADY T. JUNE 28, 1866.

LADY T. JANUARY 17, 1866.

*That*

LADY T. JANUARY 17, 1866.

*To*

OSBITT, JANUARY 26, 1865.

*To. Turnels*

OSBITT, JANUARY 26, 1866.

NO. 35.

*Annie*

LADY T., SYDNEY, JULY 24, 1866.

*Winton*

LADY T. MAY 27, 1867.

*Victoria Valet*

LADY T. JANUARY 17, 1868.

ARTHUR ORTON.

*of*

MARY ANN LOADER NEW YEAR'S EVE.

*Sister*

TO SISTER, MARCH 81.

*That*

TO JUNE 16 JUNE 28.

*Down*

MARY ANN LOADER, DECEMBER '2 1852.

*Down.*

MARY ANN LOADER, JANUARY 19, 1859.

*do not  
occur.*

At last - When

MISS DOUGHTY, FEBRUARY 4, 1892.

When

NO. 22.

When

LADY T. JUNE 19, 1891.

When

NO. 8.

Your Truly

Yours Truly

NO. 68.

My dear Mary

OURITT, JANUARY 29, 1895.

My dear

LADY T. MAY 24, 1896.

Yesterday

LADY T. JULY 24, 1896.

Yours Truly

NO. 66.

My dear Mary

MARY ANN LOADER, DECEMBER 12, 1892.

My dear

MARY ANN LOADER, CHRISTMAS DAY.

My dear

MARY ANN LOADER, JANUARY 19, 1893.

Your Truly

NO. 29.

115







# ROGER CHARLES TICHBORNE,

ARTHUR ORTON.

*and*

TO SISTER, MARCH 31.

*any*

MARY ANN LOADER, DECEMBER 12, 1892.

*eye*

MARY ANN LOADER, DECEMBER 28, 1892.

*best*

TO SISTER, MARCH 31

*can*

MARY ANN LOADER, DECEMBER 28, 1892.

*come*

MARY ANN LOADER, NO. 27

*day*

MARY ANN LOADER, JANUARY 16, 1893.

*do not*

DEFENDANT.

*and*

LADY T. JUNE 29, 1894.

*any*

ROUS, GRAVESEND, JANUARY 4, 1897.

*eye*

LADY T., SYDNEY, NO. 85.

*best*

OUBITT, JANUARY 17, 1897.

*can*

LADY T. JANUARY 17, 1896.

*come*

LADY T., SYDNEY, NO. 85.

*day*

REV. WHELAN, 14, FORD, FEBRUARY 3, 1897.

*do not*

ROGER CHARLES TICHBORNE.

*and*

LADY T., CLONMEL, JUNE 14, 1891.

*any*

LADY T. JUNE 19, 1891.

*eye*

LADY T., CLONMEL, JUNE 19, 1891.

*best*

MISS DOUGHTY, FEBRUARY 4, 1892.

*can*

LADY T. JUNE 19, 1891.

*come*

NO 21.

*day*

CANTERBURY, JULY 19, 1892.

*decided*

NO 8.

DANDANT AND ARTHUR ORTON.

LADY T. HEDGECOCK, NO. 14.  
*every*  
 NO. 12.

*fine*

LADY T. CANTERBURY, JANUARY 8, 1883.

*fine*

NO. 17.

*give*

LADY T. JANUARY 6, 1883.

*have*

MRS. DOUGHTY, FEBRUARY 4, 1883.

*hope*

NO. 6.

*it*

NO. 11.

*if*

NO. 36.

NO. 14.

*ever*

LADY T. JANUARY 17, 1886.

*fine*

CUBITT, JANUARY 26, 1886.

*fine*

NO. 68.

*give*

MRS. CANTERBURY, FEBRUARY 9, 1887.

*have*

ROUS, JANUARY 4, 1887.

*hope*

CUBITT, JANUARY 17, 1887, NO. 76.

*it*

CUBITT, JANUARY 17, 1887.

*if*

NO. 42.

*ever*

MARY ANN LOADER, DECEMBER 12, 1882.

*fine*

NO. 24.

*fine*

MARY ANN LOADER, DECEMBER 28, 1882.

*give*

MARY ANN LOADER, NEW YEARS EVE.

*have*

MARY ANN LOADER, NO. 27.

*hope*

MARY ANN LOADER, DECEMBER 12, 1882.

*it*

MARY ANN LOADER, DECEMBER 12, 1882.

*if*

NO. 23.







# ROGER CHARLES TICHBORNE.

*know*

NO. 91.

*keep*

NO. 91.

*letter*

LADY T. CANTERBURY, JANUARY 6, 1863.

*leave*

NO. 0.

*may*

LADY T., CANTERBURY, 1863, NO. 20.

*my*

LADY T., CANTERBURY, 1863, NO. 20.

*never*

MISS DOUGHTY (RESOLVE, 1859), NO. 12.

*not*

H. D. SEYMOUR, JULY 16, 1862.

*of*

# DEFENDANT.

*know*

LADY T., SYDNEY, JANUARY 24, 1866.

*keep*

LADY T., JANUARY 17, 1866.

*letter*

LADY T., SYDNEY, JANUARY 24, 1866.

*leave*

LADY T., SYDNEY, JANUARY 24, 1866.

*may*

LADY T. JULY 24, 1866.

*my*

NO. 33.

*never*

LADY T., JANUARY 17, 1866.

*not*

H. D. SEYMOUR, FEBRUARY 10, 1867.

*of*

# ARTHUR ORTON.

*know*

MARY ANN LOADER, DECEMBER 28, 1862.

*keep*

TO SISTER, NO. 29.

*letter*

MARY ANN LOADER, NEW YEAR'S EVE, NO. 28.

*leave*

MARY ANN LOADER, NEW YEAR'S EVE.

*may*

MARY ANN LOADER NEW YEAR'S EVE.

*my*

MARY ANN LOADER, CHRISTMAS DAY.

*never*

TO SISTER, MARCH 31, NO. 29a.

*not*

MARY ANN LOADER, JANUARY 16, 1863.

*of*



No. 10.

*spent*

LADY DOUGHTY, 1884, No. 22.

*perhaps*

GOSFORD, OCTOBER 29, 1881.

*quite quite*

No. 7.

*minim*

No. 18.

*minim*

No. 20.

*shall*

LADY F. OCTOBER 6 1892.

*same*

LADY DOUGHTY, NOVEMBER 29, 1892.

*send*

No. 118.

LADY T JUNE 29, 1890.

*photograph pound*

LADY T. JULY 24, 1890.

LADY T., WAGGA, JANUARY 17, 1898.

*possible*

LADY T JULY 18 1897.

*quite*

CUBITT, JANUARY 17 1897.

*received*

No. 33.

*received*

No. 95.

*shall*

MRS. GREENWOOD, FEBRUARY 3, 1897.

*same*

CUBITT, JANUARY 17, 1897.

*send*

No. 75.

MARY ANN LOADER JANUARY 16, 1893.

*plenty plenty*

No. 24.

TO JURY, JUNE 28.

*possible*

MARY ANN LOADER, NEW YEAR'S EVE.

*quite*

MARY ANN LOADER, DECEMBER 12 1892.

*received*

TODAY, No 26.

*received*

MARY ANN LOADER, NEW YEAR'S EVE.

*received*

VOW, MARCH 11, 1896.

*shall*

TO SISTER, MARCH 31, No. 29a.

*same*

TO SISTER, MARCH 31, No. 29a

*send*

No. 27.



ROGER CHARLES TICHBORNE.

*think*

NO. 22.

*think*

LADY T. OCTOBER 6 1892.

*though they*

NO. 17.

NO. 34.

*useless*

LADY T. JUNE 19, 1891.

*very*

LADY T. JUNE 19 1891

*when*

LADY T. JANUARY 19, 1892, NO. 19.

*write*

LADY T. JUNE 19, 1891

*your*

LADY T. CLONMEL NO. 4.

*yet*

DEFENDANT.

*has*

M. D. SEYMOUR ALBENSFORD NO. 42

*think*

COTTEE, SYDNEY JULY 29.

*though they*

NO. 32

NO. 76.

*us*

LADY T. FEBRUARY 16, 1897.

*very*

M. D. SEYMOUR, ALBENSFORD NO. 42

*when*

ROUS, JANUARY 4, 1897

*write*

ROUS JANUARY 4, 1897

*your*

M. D. SEYMOUR, ALBENSFORD NO. 42.

*yet*

ARTHUR ORTON.

*has*

MARY ANN LOADER, NEW YEAR'S EVE.

*though*

TO SISTER MARCH 31. NO. 249.

*they*

NO. 28.

*use*

TO SISTER, MARCH 31, NO. 294.

*very*

MARY ANN LOADER, DECEMBER 12, 1892, NO. 29

*when*

MARY ANN LOADER'S 7.

*write*

MARY ANN LOADER DECEMBER 29 1892

*your*

MARY ANN LOADER, DECEMBER 29 1892.

*yet.*







ROGER CHARLES TICHBORNE.

EXTRACT FROM LETTER OF ROGER CHARLES TICHBORNE TO LADY TICHBORNE.

JANUARY 4<sup>TH</sup>, 1852.

My Dear Mother  
I wish you a happy  
new year, may you  
enjoy every thing  
sent you, better  
I shall say all your  
wishes be answered  
please I for your happiness  
I hope it is for you  
I am in the most  
of your mother's happiness  
you with me, so



DEFENDANT.

LETTER OF DEFENDANT TO LADY TICHBORNE, JULY 24<sup>TH</sup>, 1866.

Sydney July 24/66

My Dear Mama

I received your letter yesterday morning. And was somewhat disappointed that you do not acknowledge me has your son. Surely my Dear mama you must know my writing. You have cause me a deal of trouble but it matters not. Has I have no wish to leave the Country more I enjoy much good health. I have grown very stout. Yesterday one of Uncle Edwards old servants call on me. He been living here a long while







ROGER CHARLES TICHBORNE.

*suavit & felicitatem  
mactans non minus*

EXTRACT FROM LETTER OF ROGER CHARLES TICHBORNE TO LADY TICHBORNE.  
OCTOBER 5<sup>TH</sup> 1852.

*My Dear Mother*  
I wish to  
my intention to to have the  
Army bands begin soon  
before the leaves are given  
out if I don't want to lose  
money. If I have the Currier  
and in Spring. If I have a  
funny to travel, I shall go  
and travel through South  
America and Mexico  
which are two countries  
which I feel great curiosity  
to see.

## DEFENDANT.

He is name Gintfoyle. you must remember him. He was remodeling the Garden at Tichborne when I was staying at Uncle Edwards

He knew me has soon has he see me. His wife was with him. she look very young yet. And yet she has eleven children. You spoke of Baugle in your letter to Cubbit. I have made enquire but can not find him. Mr Israel is here with Sir John Young.

I have seen him. and had a long conversation with him. I heard that the Rev P<sup>r</sup> Phillips was out here but I can not find him. My Dear Mame the







ROGER CHARLES TICHBORNE, NOV<sup>R</sup> 22<sup>ND</sup> 1852.

My dear Anne  
Chol.  
Went.

My Dear Sir

I shall leave this  
day morning at 11 o'clock  
at the dock house and meet  
at four times Dear  
with the General. and  
me that if you have  
time and to see the  
news.

DEFENDANT

119  
 post closes in ten minutes more  
 for France so I will say good  
 bye. excuse I am too late. If too  
 late I will send this to England  
 as the English Mail does not  
 close for two hours after the  
 the mail for France

I have enclosed a photograph  
 of my self that you may  
 see how greatly I have improv.  
 Hoping my dear mama to see  
 alive once more. But I am  
 afraid not, as I can not get  
 sufficient money to come home  
 with. Good bye my dear mama  
 and may the Blessed Maria have  
 mercy on your soul.







ROGER CHARLES TICHBORNE.

Yours Truly

R. C. Tichborne.

22 November 1852.

P.S. Have you left  
since you have been  
at Charington



DEFENDANT

I Remain your  
Affectionate Son  
Roger Charles Tichborne

Metropolitan Hotel  
pitts Street  
Sydney

J. Lady Tichborne  
40 rue neuve Les Mathurins







LETTER OF ARTHUR ORTON TO MARY ANN LOADER.  
NEW YEAR'S EVE.

New years Eve

My Dear Mary Ann

I received your letter this evening and was very glad to hear that you are quite well, as it leaves me the same. I wrote you a letter the day we left the downs. But one of the men found it behind one of the water cast. so i suppose the Boatman i give it to. Dropet.

But i will send you it so as you shall see it was so. not that i think you will doubt my word.

I was at first afraid that you would not answer my letter when i found the other. So my Dear ~~my~~ Mary Ann you must excuse me. on your not getting it.

I hope we may not continue like this long as i am miserable with out a fair wind,

I will as soon as possible write my Dear when we get out

EXTRACT OF LETTER OF DEFENDANT TO MR GIBBES, JANY 17<sup>TH</sup> 1867.

Dear sir

My Grandma knows me, the moment she sees me and has been with me ever since. you need not be afraid. but everything will be all right soon. do not forget to send me the paper. that it may see what you are all doing in Wagga. you had better address them to my Solicitor 25 poultry Landan. as the house we have taken in Craydon is only temporary. I wish you to send to your agent in Melbourne. and tell him to look at the Census of 1854. July about the twenty fourth. and see if he can find the arrival of the Dopey. and if so to send a copy immediately. as it may be very wared. now do not delay this. and do not trust to Mr.





ARTHUR ORTON.

I have never been on shore here  
yet. they are frightened i will leave  
her. Because i said so the other  
day in joking. I have not  
lost my senses yet a while. excuse  
the shortness of the letter as it  
is very late, 1/4 to 12 and i am very  
sleepy so Good bye  
give my Love to all enquiren  
friend and except the same from  
Your affectionate friend

Arthur Orton  
give my best respects to your  
Mother and tell her i thank  
her kindly for her Good wishes  
Good-bye







This day i have received  
 a letter. from Donald  
 Mac Donald. With the  
 Seal Broken. Arthur  
 Orton here make a vow  
 on this Book. Although  
 not a Bible. It bear a cross.

That has i am a man of  
 Bone Blood and flesh.  
 That i will find out the  
 man if possible. That broke  
 the said seal. And that i  
 will punish him according  
 to the laws of my Countie.

11<sup>th</sup> march Signed Arthur Orton  
 1858. Dargo

, MARCH 11TH, 1858.

Mr Johnson

Mr Johnson  
Newborne Park  
Gipps Land

W D Mac Millan  
Bensby Park

Arthur McDonald  
Nov 16 1858













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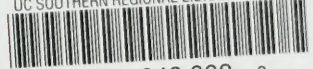
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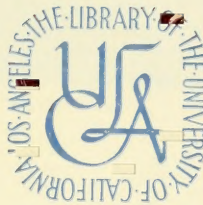


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